

**OPERATING AGREEMENT
FOR
MANAGEMENT OF THE ALASKA CLEAN WATER
FUND**

BETWEEN

**THE STATE OF ALASKA
ALASKA DEPARTMENT OF ENVIRONMENTAL
CONSERVATION**

AND

**THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION X**

Prepared by
The Division of Water, Alaska Department of Environmental Conservation

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1. STATE ENABLING LEGISLATION (AS 46.03.032)
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OPERATING AGREEMENT

I. PURPOSE

This Agreement establishes a contractual relationship between the U.S. Environmental Protection Agency (EPA) and the State of Alaska, Department of Environmental Conservation (DEC) and supersedes the original agreements signed on November 30, 1988.

The purpose of this Agreement is to define and integrate rules, regulations, guidelines, policies, procedures, and activities to be followed by EPA and DEC in administering the Alaska Clean Water Fund (ACWF), Alaska's Revolving Loan Fund Program, prescribed by Title VI of the Clean Water Act as amended by the Water Quality Act of 1987, Public Law 100- 4. DEC will use the ACWF account to administer the loan fund. This Agreement will continue from year-to-year and will be incorporated by reference into the annual capitalization grant agreement between EPA and the DEC. DEC will use a fiscal year of July 1 to June 30 for reporting purposes.

DEC and EPA agree to implement modifications to this Agreement required by Congress, legal ruling or EPA regulations. Any program requirements that necessitate modification of this Agreement will be negotiated and implemented on a schedule agreed to by DEC and the Environmental Protection Agency.

II. OBJECTIVE OF THE ALASKA CLEAN WATER FUND PROGRAM

The primary objective of the ACWF program is to improve Alaska's water quality by providing a continuing source of financing for projects and activities that protect or enhance water quality. This will assist Alaskan communities attain and maintain compliance with the Clean Water Act. Low interest loans, refinancing and local obligation guarantees will be made available.

III. IMPLEMENTATION OF THE OPERATING AGREEMENT

This agreement becomes effective when both the Regional Administrator of the Environmental Protection Agency, Region X and the Commissioner of the Alaska Department of Environmental Conservation signs it.

IV. SUMMARY OF THE BASIC PROVISIONS OF THE OPERATING AGREEMENT

A. The parties to this Agreement are:

The United States EPA, Region X, and

The Alaska DEC

- B. DEC, an instrumentality of the State, has responsibility for the total management and conduct of the ACWF
- C. Alaska enacted enabling State Revolving Fund legislation in 1987 (Senate Bill 1677) entitled "The Alaska Clean Water Fund" (Attachment 1).
- D. DEC has adopted regulations for the implementation of the ACWF (Attachment 2).
- E. DEC has revised operating procedures to implement an Environmental Review Process (Attachment 5).
- F. DEC certifies that it has the authority and legal, managerial, technical and operational capability to meet the requirements necessary for administering the ACWF program.
- G. EPA is responsible for awarding capitalization grants.
- H. EPA will provide DEC with grant payments to the ACWF account. Such payments will be made in accordance with a projected schedule submitted by DEC and negotiated with the U.S. EPA.
- I. EPA is responsible for evaluating DEC's administration and implementation of the Alaska Clean Water Fund in order to insure that it is meeting the objectives of such funds under the Clean Water Act and insure the Fund's ability to continue assisting eligible projects in perpetuity.

V. THE ROLE AND RESPONSIBILITIES OF DEC

The Commissioner of the Alaska Department of Environmental Conservation assures the Regional Administrator for Region X that Alaska will execute its responsibilities under this Operating Agreement in conformance with applicable Federal laws and regulations.

- X. Maintain the ACWF as a separate fund distinct from any other money or fund in the treasury. Separate accounts may be created within the fund, which may be combined for purposes of investment.
- Y. Require all fund recipients to establish a dedicated source of revenue for repayments.
- Z. It is the intent of DEC to apply equivalency requirements to all projects until Alaska has met the equivalency requirement under the Clean Water Act. However, a rule change has been approved to allow a waiver of these requirements for "minor projects in unusual circumstances: when 'compliance is not cost effective and the waiver will not be detrimental to the interests of the borrower or the state.'" The waiver can only be used for projects, which would be eligible for a categorical exclusion from environmental review. These minor projects in excess of 20% of the cap grant amount may be funded, but will not apply toward the equivalency requirement.

VI. THE ROLE OF THE ENVIRONMENTAL PROTECTION AGENCY

EPA AGREES TO:

- A. Provide funding by awarding capitalization grants to DEC upon approval of a completed application. Under no circumstances, shall EPA withhold grant funds from DEC unless explicitly agreed to under conditions set forth in the capitalization grant agreement.
- B. Provide grant funds to DEC according to a mutually agreeable payment schedule defined in DEC's Intended Use Plan.
- C. Provide technical assistance to DEC and assist in developing and conducting training programs.
- D. Provide advice and consultation, as requested by DEC.
- E. Inform DEC of non-compliance and the necessary corrective action.
- F. Provide oversight through the Annual Review and Annual Audit Process.
- G. Provide DEC with permit information relating to individual projects, including discharge limitations.
- H. Carry out other activities and duties as agreed to in this document or specified in law or regulation.

VII. CAPITALIZATION PAYMENTS

The schedule of payments is based upon DEC's Intended Use Plan. Once a payment has been made by increasing the amount of funds available for cash draw, EPA will not reduce that amount, unless a situation of non-compliance has developed.

No payments will be made later than 8 quarters after the award of the capitalization grant agreement, or 12 quarters after the date the funds were allotted to DEC.

VIII. CASH DRAWS

Money will be transferred to the Alaska Clean Water Fund from the U.S. Department of the Treasury in accordance with the EPA's Electronic Funds Transfer (EFT) system requirements. Cash draws for the ACWF will be made separately from other cash draws from the combined federal EFT transfers.

IX. FUND TRANSFER

The State may transfer money between the Alaska Clean Water Fund and the Alaska Drinking Water Fund in accordance with federal requirements governing such transfers and where allowed by state law. Federal regulations allow a transfer of up to an amount equal to 33% of the Drinking Water Capitalization Grants, or Clean Water Capitalization Grants, whichever fund is being transferred to and from.

X. DISBURSEMENTS

DEC's procedures for the disbursement of monies from the ACWF are described in Attachment 7.

XI. STAFFING AND MANAGEMENT

- A. DEC will provide the staffing and training necessary to administer the ACWF program.
- B. DEC will not use more than 4 percent of the capitalization grants received for administering the SRF. However, fees collected for the Administration of the SRF are not subject to this limitation.
- C. DEC will conduct an annual independent audit of the ACWF and its operations. This audit will follow procedures specified in the General Accounting Office Standards for Audit of Governmental Organizations, Programs and Functions. The audit report will be completed within one year of Alaska's fiscal year and will be sent to the Regional CWSRF Program Manager for Region X.
- D. EPA agrees to notify DEC within 90 days of the technical adequacy of the audit report and its findings.

- E. DEC will strive to ensure the long-term health and viability of the fund and will annually assess the financial health of the ACWF by examining fund balances, sources of funds, repayment streams, etc. Procedures will be revised, as needed, to promote the Fund's availability. The Department of Revenue will manage the investment of cash in the same manner as it manages other separate accounts (see Attachment 9 for Memorandum of Understanding).

XII. STATE COORDINATION

DEC assures that a coordinated program will be carried out. Attachment 3 contains a chart and narrative demonstrating the relationship of offices involved in the operation of the ACWF. Attachment 4 depicts the funding, review and decision making processes associated with the ACWF.

XIII. INTENDED USE PLAN

An annual priority list will be developed according to DEC's criteria system. The list will include all projects expected to receive financial assistance within the next year and may include projects for which an assistance request is expected within the next two to three years.

XIV. ANNUAL REPORT

Annually, DEC will report the activities of the ACWF using a format negotiated with EPA. The basis of the annual report is outlined in Attachment 8. The report will be sent to the Regional Administrator no later than September 30, which will include an independent audit report. However, EPA may grant a one month extension to October 31 for submitting the report to allow for the inclusion of the independent audit report. Reports shall be submitted to the EPA Project Officer and may be provided electronically. This report will identify loan recipients, loan amounts, loan terms, and project categories. It will further describe how DEC has used the loan program to meet goals and objectives identified in the Intended Use Plan.

XV. ANNUAL REVIEW

Annually, DEC and EPA will negotiate a plan for the annual review. The plan will be written by EPA and will include specific activities, time and place, and materials to be made available during the review.

XVI. SANCTIONS AND COMPLIANCE

In the event that the EPA identifies an instance of noncompliance it agrees to address the noncompliance in accordance with the requirements of Section 605 of the Clean Water Act, as amended by the Water Quality Act of 1987, Public Law 100-4.

XVII. CONGRESSIONAL AND PUBLIC INQUIRES

Responses to congressional and public inquiries will be made by the State and, as necessary, coordinated with EPA.

XVIII. RECORDS

DEC will receive project documents from assistance recipients. These documents, together with the State's review memoranda and summary checklists, will be filed in an official project file. Project files will be available for review at DEC's offices. DEC will retain project files in accordance with 40 CFR Part 30 and Part 31 (as appropriate).

DEC will provide for public access to its records in conformance with Alaska's Public Records Act. EPA will provide for public access to its records in conformance with the Federal Freedom of Information Act.

XIX. PUBLIC PARTICIPATION

The Department will ensure proper public participation in accordance with the direction provided by the EPA's regulations governing public participation in the Clean Water Act Programs, found at 40 C.F.R. Part 25 and the applicable state laws and rules. Special attention will be given to the public participation during the development of the project priority list, the Intended Use Plan and the environmental review processes.

XX. DESIGNATED SIGNATORIES

The following officials are authorized to effect program changes (items significantly altering the Operating Agreement):

For DEC: The Commissioner, Alaska Department of Environmental Conservation.

For EPA: The Regional Administrator, United States Environmental Protection Agency, Region X.

Items not altering the Operating Agreement but changing implementation of the Program may be made through the Agreement of:

For DEC: The Director, Division of Water, Alaska Department of Environmental Conservation

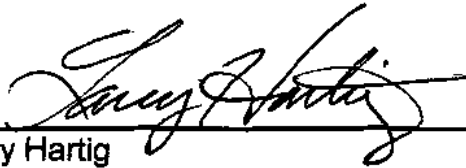
For EPA: The Director, Office of Water and Watersheds, United States
Environmental Protection Agency, Region X.

This agreement may be amended at any time by mutual agreement. All revisions regarding modifications to any attachment or procedure must be through the designated officials indicated above.

The authority for this Agreement is found in Title VI of the Clean Water Act as amended by the Water Quality Act of 1987, Public Law 100-4 and Alaska Statutes 46.03.032 and 46.03.020.

This, agreement will be effective commencing on the

3 day of August, 2007



Larry Hartig
Commissioner
Alaska Department of Environmental Conservation



Regional Administrator
United States Environmental Protection Agency, Region X

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

July 15, 1987

The Honorable Stephen McAlpine
Lieutenant Governor
State of Alaska
P.O. Box 1A
Juneau, AK 99811

Dear Lieutenant Governor McAlpine:

I am transmitting the following bill passed by the First Session of the Fifteenth Legislature to your office for permanent filing:

HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 167
(ReSource)

(Relating to grants for water supply, sewage, and solid waste facilities; establishing a revolving loan fund; and providing for an effective date.)

Chapter No. 40, SLA 1987

Sincerely,


Steve Cowper
GOVERNOR



LAWS OF ALASKA

1987

Source

HCS SB 167(Rea)

Chapter No.

40

AN ACT

Relating to grants for water supply, sewage, and solid waste facilities; establishing a revolving loan fund; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1, LINE 10

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: June 8, 1987
Actual Effective Date: June 9, 1987

◆ Sec. 46.03.032. Alaska clean water fund.

(a) There is established as a separate fund the Alaska clean water fund, which is distinct from any other money or fund in the treasury, and which consists of money appropriated by the legislature to meet federal matching requirements, federal capitalization grants, loan repayments, interest received from loan repayments, interest received from investment of money in the Alaska clean water fund, and the proceeds and accrued interest received from the sale of revenue bonds issued under AS 37.15.560 - 37.15.605 and secured by the Alaska clean water fund. Separate accounts may be created in the Alaska clean water fund. The accounts may be combined for purposes of investment.

(b) The provisions of this section shall be liberally construed in order to carry out the purposes for which they were enacted. The department shall administer the Alaska clean water fund consistent with the requirements of this section and AS 37.15.560 - 37.15.605.

(c) The department may accept and make use of all capitalization grants provided by the federal government under 33 U.S.C. 1251 - 1387 (the federal Clean Water Act), as amended.

(d) Except as otherwise limited by federal law, the Alaska clean water fund may be used

(1) for the following categories of projects:

(A) planning, designing, building, constructing, and rehabilitating a public wastewater collection, treatment, or discharge system;

(B) implementing a management program for controlling water pollution from nonpoint sources under 33 U.S.C. 1329, including planning, designing, building, constructing, and rehabilitating a solid waste management system; and

(C) developing and implementing an estuary conservation and management program under 33 U.S.C. 1330;

(2) to provide the following types of financial assistance for the categories of projects listed in (1) of this subsection:

(A) making loans to municipalities and other qualified entities;

(B) buying or refinancing the debt obligations of a municipality or other qualified entity;

(C) providing collateral security for or purchasing insurance for a municipal, state agency, or other qualified entity debt obligation; and

(3) to pay and secure the payment of the principal of and interest on revenue bonds issued by the state and to pay the costs of issuance and administration of the bonds, so long as the proceeds of the bond sale are deposited in the Alaska clean water fund.

(e) Repayment of loans shall be secured in a manner that the department determines is feasible to assure prompt repayment under a loan agreement entered into with the borrower.

(f) The department

(1) may spend money from the Alaska clean water fund to pay the costs of

(A) administering the fund; and

(B) the department in conducting activities under this section and AS 37.15.560 - 37.15.605, including the costs of issuance and administration as defined in AS 37.15.605 ;

(2) shall spend money from the Alaska clean water fund to pay

(A) into the bond redemption fund (AS 37.15.565), and into any other bond redemption fund or account created by a relevant bond resolution, the amount certified by the state bond committee under AS 37.15.585; and

(B) the costs of the state bond committee in conducting activities under this section and AS 37.15.560 - 37.15.605, including the costs of issuance and administration as defined in AS 37.15.605.

(g) A municipality or other qualified entity wishing to borrow money from the Alaska clean water fund shall demonstrate to the satisfaction of the department that it

(1) has sufficient legal authority to incur the debt for which it is applying; and

(2) will establish and maintain a dedicated source of revenue or other acceptable revenue source for repayment of the loan and sufficient reserves for the loan as may be necessary.

(h) Allocation of Alaska clean water fund loans shall be made in accordance with the priority list developed by the department, using criteria specified in regulations adopted by the department.

(i) Before making a loan from the Alaska clean water fund, the department shall, by regulation, specify

(1) standards for the eligibility of borrowers and the type of projects to be financed with loans;

(2) loan term and interest rate policies for loans made from the fund;

(3) standards regarding the technical and economic viability and revenue self-sufficiency of eligible projects;

(4) collateral or other security required for loans;

(5) terms of loans; and

(6) other relevant criteria, standards, or procedures.

(j) Except as necessary to comply with the covenants of a bond resolution under AS 37.15.573, a loan made by the department shall be made according to the standards, criteria, and procedures established by regulations under this section. A loan made from the Alaska clean water fund may be subject to the state aid intercept provisions of AS 37.15.575. Except as necessary to comply with the covenants of a bond resolution under AS 37.15.573, in making a loan from the Alaska clean water fund for a solid waste management system, the department shall give priority to a project that will alleviate severe health or environmental concerns in the community or region proposing the system. In addition, the department may consider

(1) the extent of local or regional support for the proposed system; and

(2) the extent to which the applicant can demonstrate that the full range of solid waste management options has been reasonably considered and that the proposed system is consistent with the promotion of the solid and hazardous waste management practices established in AS 46.06.021.

(k) The department shall prepare reports required by the federal government in conjunction with federal capitalization grant award conditions. The department shall also prepare reports and notices, including notices of default, required by the state bond committee in conjunction with bonds issued under AS 37.15.560 - 37.15.605. The department shall also prepare a biennial report on the Alaska clean water fund and notify the legislature that it is available on or before the first day of each first regular session of the legislature.

(l) Loan repayments and interest earned by loans from the Alaska clean water fund shall be deposited in the Alaska clean water fund.

(m) Annual principal payments shall commence within one year after project completion.

(n) *[Repealed, Sec. 14 ch 106 SLA 1994].*

(o) Regulations adopted by the department under this section that would affect issuance or repayment of revenue bonds under AS 37.15.560 - 37.15.605 may not be inconsistent with those statutes or with regulations adopted by the state bond committee under those statutes. To the extent that regulations adopted by the department are inconsistent with AS 37.15.560 - 37.15.605, with regulations adopted by the state bond committee under those statutes, or with the covenants of a bond resolution adopted under AS 37.15.573, the provisions of AS 37.15.560 - 37.15.605, the regulations adopted under those statutes, and the covenants of the bond resolution govern.

(p) In this section,

(1) "other qualified entity" means

(A) an intermunicipal or interstate agency as those terms are used in 33 U.S.C. 1383, and may include an authority, corporation, instrumentality, enterprise, or other entity formed through an agreement between a municipality and one or more other governmental entities under AS 29.35.010 (13) or under art. X, sec. 13, Constitution of the State of Alaska, or between a municipality and a regional housing authority under AS 18.55.996 (b); or

(B) an organization that is eligible for assistance under 33 U.S.C. 1383, that is not exempted from regulation under AS 42.05.711 (d), that provides wastewater service under a certificate of convenience and necessity from the former Alaska Public Utilities Commission or the Regulatory Commission of Alaska, and that is economically regulated by the Regulatory Commission of Alaska;

(2) "solid waste management system" includes capital improvements and equipment used for the purpose of solid and hazardous waste source reduction, recycling, treatment, or disposal.

✦ Sec. 46.03.034. Alaska clean water administrative fund.

(a) The Alaska clean water administrative fund is established as a separate fund that is distinct from other money or funds in the treasury. The fund is composed of two accounts, the

(1) Alaska clean water administrative operating account; and

(2) Alaska clean water administrative income account.

(b) The legislature may appropriate to the Alaska clean water administrative operating account the annual balance of the Alaska clean water administrative income account.

(c) The department shall administer the Alaska clean water administrative fund.

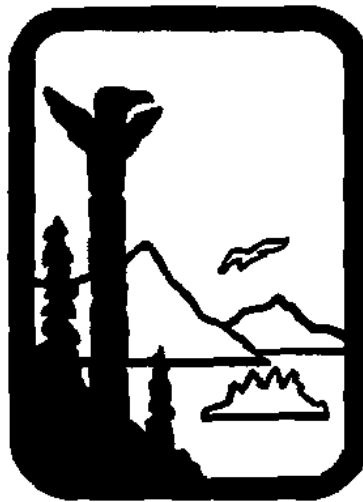
(d) The Alaska clean water administrative operating account may be used to pay for the department's operational and administrative costs necessary to manage the Alaska clean water fund and the Alaska clean water administrative fund and for such other purposes permitted by federal law.

(e) Money received in payment of fees charged by the department under the authority of AS 46.03.035 and earnings on the Alaska clean water administrative fund shall be deposited in the Alaska clean water administrative income account.

✦ Sec. 46.03.035. Fees charged for loans made from the Alaska clean water fund.

The department may charge and collect reasonable fees in connection with making and servicing loans made by the department under the authority of AS 46.03.032. The department shall by regulation specify the rates and amounts of the fees.

**DEPARTMENT OF
ENVIRONMENTAL CONSERVATION**



18 AAC 76

**Alaska Clean Water and Drinking
Water Revolving Loan Funds**

Amended through April 28, 2005

**Frank Murkowski
Governor
Kurt Fredriksson
Commissioner**

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Chapter 76. Alaska Clean Water and Drinking Water Revolving Loan Funds.

Article

1. Alaska Clean Water Fund (18 AAC 76.005 - 18 AAC 76.100)
2. Alaska Drinking Water Fund (18 AAC 76.200 - 18 AAC 76.270)
3. General Provisions (18 AAC 76.990)

Article 1. Alaska Clean Water Fund.

Section

05. Purpose
10. Eligibility
20. Priority list process
30. Application process
40. Environmental review
50. Ability to repay
60. Financial assistance conditions
70. Post-construction activities
80. Repayment; interest
90. Disbursement
100. Reconsideration of financial assistance request

18 AAC 76.005. Purpose. The regulations in 18 AAC 76.005 - 18 AAC 76.100 apply to financial assistance from the Alaska clean water fund, a federally-sponsored fund authorized by 33 U.S.C. 1381 - 33 U.S.C. 1387 (Title VI, Clean Water Act) and created by AS 46.03.032(a). Financial assistance from the Alaska clean water fund is available for the categories of projects listed in AS 46.03.032(d)(1). (Eff. 11/19/88, Register 108; am 8/2/97, Register 143)

Authority: AS 46.03.020 AS 46.03.032

18 AAC 76.010. Eligibility. (a) A municipality or other qualified entity under AS 46.03.032 may apply to the department for financial assistance from the Alaska clean water fund for a project described in AS 46.03.032.

(b) Repealed 8/2/97.

(c) Project costs eligible for refinancing from the Alaska clean water fund are

(1) eligible costs listed in (d) of this section, incurred after March 7, 1985, for a project that began construction after March 7, 1985 and that was not partially financed with a construction grant from the U.S. Environmental Protection Agency (EPA); and

(2) any portion of a project that was determined to be ineligible for grant funding under 33 U.S.C. 1281 - 33 U.S.C. 1299 (Title II, Clean Water Act).

(d) A municipality or other qualified entity may spend money received from the Alaska clean water fund for

(1) investigations or studies necessary to complete a facility plan, or plans and specifications, required by 18 AAC 76.005 - 18 AAC 76.100;

(2) surveys, designs, plans, working drawings, and specifications;

(3) demolition costs, and costs to construct, alter, remodel, improve, or extend a facility;

(4) machinery, furnishings, and equipment;

(5) laboratory testing related to construction and design;

(6) costs to administer, inspect, and supervise the project;

(7) the eligible portion of change orders approved by the department;

(8) the purchase of vehicles used for operation of the facility, as approved by the department;

(9) insurance required by the financial assistance agreement;

(10) computer systems dedicated to facility use;

(11) reasonable landscaping costs; and

(12) land acquisition for that portion of the facility used

(A) to dispose of treated sewage or solid waste; or

(B) as an integral part of the treatment process.

(e) Force account labor and equipment charge rates may be paid from financial assistance received from the Alaska clean water fund if they are included in the financial assistance agreement and if they are approved by the department. A change in force account charge rates must be submitted to the department for approval. To be approved, labor rates must be provided to the department in a form that documents basic pay, benefits, leave, and holiday rates.

(f) The department will, in its discretion, apply a portion of a capitalization grant received under 33 U.S.C. 1381 - 33 U.S.C. 1387 (Title VI, Clean Water Act) to cover the reasonable costs of administering the Alaska clean water fund and to provide technical assistance to an eligible municipality or other qualified entity. (Eff. 11/19/88, Register 108; am 8/2/97, Register 143)

Authority: AS 46.03.020 AS 46.03.032

18 AAC 76.020. Priority list process. (a) To receive financial assistance from the Alaska clean water fund, a project must be included on the Alaska clean water fund priority list developed by the department. Projects will be funded in accordance with the priority list, if money is available.

(b) An applicant seeking financial assistance from the Alaska clean water fund must first submit a request for priority list ranking on a form provided by the department.

(c) The department will review requests for priority list ranking using criteria set out in (d) of this section and will, at least annually, revise the priority list. The proposed list will be made available for a 30-day public comment period. After the public comment period, the department may, based on public comments, revise the proposed list. An applicant's ranking on the anticipated fundable portion of a priority list is valid until the list is revised. An applicant must resubmit a request for priority list ranking each time the department proposes a revision to the priority list. If an applicant fails to resubmit a request after the department proposes a revision to the priority list, the applicant's ranking is subject to change or deletion.

(d) The department will review projects and rank them in priority funding order using the following criteria:

- (1) the applicant's readiness to initiate the project;
- (2) the type of project proposed;
- (3) current use of the receiving water that the project will benefit;
- (4) size of the population that will benefit from the project;
- (5) public health and environmental hazards to be addressed by the project; and

(6) effect of the proposed project on water quality. (Eff. 11/19/88, Register 108; am 8/2/97, Register 143; am 12/29/2000, Register 156)

Authority: AS 46.03.020 AS 46.03.032

18 AAC 76.030. Application process. (a) The department will review and approve an application for financial assistance from the Alaska clean water fund according to criteria set out in 18 AAC 76.005 - 18 AAC 76.100. To apply for financial assistance, an applicant shall submit

- (1) a completed application on forms provided by the department;
- (2) a resolution adopted by the applicant's governing body that authorizes the application and acceptance of the assistance;
- (3) certification from the applicant's attorney that the applicant has the legal authority to incur the debt that will be created by the financial assistance sought;

(4) unless the department does not consider a project facility plan necessary in order to evaluate the project adequately, a project facility plan for a wastewater treatment facility, prepared and signed by a registered engineer, that demonstrates that

(A) for a project subject to 33 U.S.C. 1383(c)(1),

(i) the project will apply best practicable waste treatment technology as defined at 40 C.F.R. 35.2005(b)(7), as amended through June 25, 1997;

(ii) more than one technology was considered in selecting the project design concept;

(iii) opportunities to construct revenue-producing facilities and to make more efficient uses of energy and resources were considered;

(iv) any related wastewater collection system is not subject to excessive infiltration or inflow;

(v) innovative and alternative treatment technologies were evaluated;

(vi) potential recreational and open space opportunities were analyzed;

(vii) the selected treatment project is the most cost-effective, feasible alternative studied; and

(viii) the proposed project will not have a significant negative environmental impact, as determined by the department, using criteria and standards set out in 18 AAC 76.040; or

(B) for a project that is not subject to 33 U.S.C. 1383(c)(1),

(i) the selected treatment project is the most cost-effective, feasible alternative studied; and

(ii) the proposed project will not have a significant negative environmental impact, using criteria and standards set out in 18 AAC 76.040;

(5) documentation of the availability of, and the commitment to use, one or more dedicated sources of revenue for repayment of the financial assistance;

(6) certification that a separate account within the applicant's accounting system has been established through which financial assistance received from the Alaska clean water fund will be administered;

(7) a value-engineering study if total building costs will exceed \$10 million,

unless the department waives this requirement;

(8) a financial capability assessment for the proposed project, on a form provided by the department, that demonstrates the applicant's ability to repay the financial assistance as required in 18 AAC 76.050 and to operate and maintain the facility;

(9) plans and specifications for the project, prepared and signed by a registered engineer, with a summary of design criteria;

(10) any other information that the applicant believes will help demonstrate eligibility for financial assistance; and

(11) any other information requested by the department.

(b) An applicant may apply for financial assistance for preconstruction activities by submitting the information required under (a)(1), (2), (5), (6), (10), and (11) of this section.

(c) The department will, in its discretion, approve a financial assistance application if

(1) the project is on the department's priority list to receive funding during the fiscal year in which the financial assistance is requested;

(2) money is available for the project;

(3) the project is eligible for financial assistance from the Alaska clean water fund;

(4) the applicant has demonstrated to the department's satisfaction its ability to repay the financial assistance;

(5) the applicant has submitted, and the department has accepted, the information required under this section; and

(6) the applicant has met the applicable requirements of 18 AAC 76.040.
(Eff. 11/19/88, Register 108; am 8/2/97, Register 143; am 12/29/2000, Register 156)

Authority: AS 46.03.020 AS 46.03.090 AS 46.03.720
AS 46.03.032

18 AAC 76.040. Environmental review. (a) The applicant shall consult with the department during facility planning to determine the required level of environmental review. The department will notify the applicant of the type of environmental documentation that will be required, if any. If required by the department, the applicant shall

(1) submit a request for categorical exclusion, with supporting documentation as specified by the department;

(2) prepare an environmental information document in a format specified by the

department; or

(3) prepare an environmental impact statement in a format specified by the department.

(b) If an applicant requests a categorical exclusion, the department will review the request and, based upon documentation submitted by the applicant, the department will notify the applicant that

(1) the project qualifies for a categorical exclusion;

(2) the applicant must prepare an environmental information document; or

(3) the applicant must prepare an environmental impact statement.

(c) If an environmental information document is required, the department will

(1) conduct an environmental assessment based upon the applicant's environmental information document and issue

(A) a draft Finding of No Significant Impact; or

(B) a notice of need to prepare an environmental impact statement; and

(2) provide a 30-day public comment period after public notice, and

(A) if negative impacts are identified, reassess the project to determine whether an environmental impact statement will be required; or

(B) if no new information is received during the public comment period that would require a reassessment, issue a final Finding of No Significant Impact.

(d) If an environmental impact statement is required, the applicant shall

(1) contact all affected state agencies to determine the required scope of the document;

(2) prepare and submit a draft environmental impact statement to all affected state agencies for review and comment;

(3) conduct a public hearing; and

(4) prepare and submit a final environmental impact statement, incorporating all state agency and public comments, for review and approval by the department.

(e) After completion by the applicant, and approval by the department, of all requirements listed in (d) of this section, the department will issue a Record of Decision documenting the mitigation measures to be required of the applicant. The financial assistance agreement will

be conditioned upon those mitigation measures.

(f) If a federal environmental review of the project has been conducted, the department will, in its discretion, adopt all or part of the federal agency's documentation.

(g) An environmental determination under this section is valid for five years. If a financial assistance application is received for a project with an environmental determination more than five years old, or if conditions have changed significantly since the last determination, the department will reevaluate the project, environmental conditions, and public views and will

(1) reaffirm the earlier decision; or

(2) require supplemental information to the earlier environmental impact statement, environmental information document, or request for categorical exclusion; based upon a review of the updated document, the department will

(A) issue and distribute a revised notice of categorical exclusion, Finding of No Significant Impact, or Record of Decision; or

(B) reaffirm its earlier decision. (Eff. 11/19/88, Register 108; am 8/2/97, Register 143; am 3/14/2002, Register 161)

Authority: AS 46.03.020 AS 46.03.032 AS 46.03.720

18 AAC 76.050. Ability to repay. (a) In deciding whether to approve a request for financial assistance from the Alaska clean water fund, the department will consider the following factors in evaluating an applicant's ability to repay financial assistance, and will require that each factor be documented or satisfied before approval is given:

(1) certification that any debt service requirement and debt service coverage test is expected to be met for the term proposed in the financial assistance application;

(2) the applicant's

(A) ability to assess and collect revenues for the project;

(B) debt repayment history;

(C) current and overall structure of debt repayment;

(D) revenue bond credit rating, if applicable;

(E) financial statements, if required by the department, including a comparison of actual financial performance to adopted budgeted operations;

(F) history of financial operations;

(G) recent levels of the debt retirement, operations, or similar fund

balances;

(H) compliance with state and federal environmental laws;

(I) levels of financial reserves for unforeseen circumstances and prospective judgments from litigation;

(J) adherence to provisions of past and current debt resolutions; and

(K) capital improvement plan and proposed debt issuance program;

(3) a utility rate feasibility study by a qualified independent consultant or registered engineer, if required by the department;

(4) any litigation or threatened litigation that might affect the project or the applicant's ability to pay debt service on the financial assistance;

(5) the demand for the proposed project; and

(6) demographic and economic trends in the proposed service area.

(b) The department will, in its discretion, deny a request for financial assistance if the department finds that the applicant has not adequately documented or satisfied the factors listed in (a) of this section. (Eff. 11/19/88, Register 108; am 8/2/97, Register 143)

Authority: AS 46.03.020 AS 46.03.032

18 AAC 76.060. Financial assistance conditions. (a) The borrower shall

(1) establish and pledge one or more dedicated sources of revenue for repayment of the financial assistance;

(2) award any construction contract estimated to equal or exceed \$50,000 through a competitive bidding process, unless the department approves another procedure; a construction contract estimated to be less than \$50,000 may be negotiated if the department approves the solicitation and negotiation procedures;

(3) submit to the department for review and approval

(A) a tabulation of construction bids received; and

(B) a copy of the construction contract, which must be awarded to the lowest responsive, responsible bidder unless this requirement is waived by the department;

(4) construct a project capable of operating in accordance with the approved plans and specifications;

(5) if appropriate for the type of project, such as for a wastewater or solid waste project, and if required by the department, prepare and submit a facility operation and maintenance manual that meets department approval;

(6) provide for a user fee system and an ordinance that meet department approval, unless this requirement is waived by the department;

(7) use accounting, audit, and fiscal procedures that conform to generally accepted accounting principles;

(8) maintain project accounts and records until the project field audit is performed and all audit issues are resolved;

(9) ensure that contracted wages paid for the construction of the facility conform to the prevailing wage rates established for the locality by the United States Department of Labor under 40 U.S.C. 276a - 276a-5 (Davis-Bacon Act), or by the state Department of Labor and Workforce Development under AS 36.05.010, whichever are applicable;

(10) require the construction contractor to furnish performance and payment bonds in accordance with AS 36.25.010; and

(11) submit change orders to the department for approval.

(b) If money is available, and if the department approves a change order submitted under (a)(11) of this section, the department will, in its discretion, amend the financial assistance agreement to reflect any change in project cost.

(c) Within one year after the date that construction has been completed, the borrower shall certify that the facility meets the design specifications and, if applicable, effluent limitations specified in its operating or discharge permit. The borrower shall correct any factor that does not meet design requirements or effluent limitations. If the borrower fails to submit the certification required in this subsection, the balance of the financial assistance will immediately become payable to the department.

(d) The department will, in its discretion, make site visits to inspect construction progress and to determine compliance with 18 AAC 76.005 - 18 AAC 78.100.

(e) The department will, in its discretion, revoke a financial assistance agreement if the borrower has not begun construction within one year after signing the agreement.

(f) Based on the information provided in 18 AAC 76.030 and 18 AAC 76.050, the terms and conditions of each financial assistance agreement will be set on a case-by-case basis. (Eff. 11/19/88, Register 108; am 8/2/97, Register 143; am 12/29/2000, Register 156)

Authority: AS 46.03.020 AS 46.03.090 AS 46.03.720
AS 46.03.032

Editor's note: As of Register 151 (October 1999), the regulations attorney made technical

revisions under AS 44.62.125(b)(6) to reflect the name change of the Department of Labor to the Department of Labor and Workforce Development made by ch. 58, SLA 1999 and the corresponding title change of the commissioner of labor.

18 AAC 76.070. Post-construction activities. (a) After the project is completed, the borrower shall notify the department in writing of initiation of operation. The department will then conduct a final on-site inspection of the project. Within one year after initiation of operation, the department will, in its discretion, conduct an audit of project expenditures. If construction is completed except for minor items, and the facility is operating, but the borrower has not sent its notice of initiation of operation, the department will, in its discretion, assign an initiation of operation date and conduct a final on-site inspection.

(b) The borrower shall provide for adequate operation and maintenance of the facility and shall retain operating personnel as required by 18 AAC 74 to operate the facility. (Eff. 11/19/88, Register 108; am 8/2/97, Register 143)

Authority: AS 46.03.020 AS 46.03.090 AS 46.03.720
AS 46.03.032

18 AAC 76.080. Repayment; finance charges. (a) The amortization schedule for financial assistance from the Alaska clean water fund will be negotiated between the borrower and the department. The department will not negotiate an amortization schedule that exceeds 20 years. The department will apply amortization repayments first toward any penalties owed, second toward the fees owed, third toward the interest, and fourth toward the principal.

(b) When the department makes an offer of financial assistance, the department will establish a fixed finance charge that includes both the fee specified in 18 AAC 76.085(a) and interest. The finance charge will be assessed on financial assistance as follows:

(1) for a contract term of five to 20 years, accrual of finance charges begins one year after the date of the first payment to the borrower; the department will assess a finance charge at a rate of one and one-half percent of the total amount of financial assistance disbursed, or 20 percent of the current bond rate as defined by the Municipal Bond Index, whichever is higher;

(2) for a contract term of less than five years, accrual of finance charges begins one year after the date of the first payment to the borrower; the department will assess a finance charge of one percent of the total amount of financial assistance disbursed, or 12 ½ percent of the current bond rate as defined by the Municipal Bond Index, whichever is higher;

(3) for financial assistance that is repaid within one year after the first payment to the borrower, the department will assess a finance charge equal to one-half of one percent of the total amount of financial assistance disbursed.

(c) Repealed 8/2/97.

(d) Repealed 8/2/97.

(e) A borrower under a financial assistance agreement under 18 AAC 76.005 - 18 AAC 76.100 that is in effect on December 29, 2000 may, within one year after that date, convert the financial assistance agreement to a new finance rate, if all other terms of the agreement remain in effect. (Eff. 11/19/88, Register 108; am 8/2/97, Register 143; am 12/29/2000, Register 156; am 3/14/2002, Register 161; am 4/28/2005, Register 174)

Authority: AS 46.03.020 AS 46.03.032 AS 46.03.035

18 AAC 76.085. Fee rate and payment. (a) In the amortization schedule established under 18 AAC 76.080 for financial assistance provided from the Alaska clean water fund, the department will include a fixed fee of one-half of one percent of the total amount of financial assistance disbursed.

(b) The department will charge the fee specified in (a) of this section on any financial assistance payments received on or after December 29, 2000. (Eff. 12/29/2000, Register 156)

Authority: AS 46.03.020 AS 46.03.034 AS 46.03.035
AS 46.03.032

18 AAC 76.086. Eligibility of expenditures. The department will use the fee specified in 18 AAC 76.085(a) for

(1) direct department costs, including

- (A) salaries;
- (B) equipment;
- (C) travel; and
- (D) professional service contracts;

(2) indirect department costs, including

- (A) rent costs allocable to the program; and
- (B) utility costs allocable to the program; and

(3) other eligible purposes as permitted by 33 U.S.C. 1381 - 1387 (Subchapter VI, State Water Pollution Control Revolving Funds, Clean Water Act). (Eff. 12/29/2000, Register 156)

Authority: AS 46.03.020 AS 46.03.034 AS 46.03.035
AS 46.03.032

18 AAC 76.090. Disbursement. (a) The department will make payments from the

Alaska clean water fund based on invoices submitted by the borrower if the requirements of 18 AAC 76.005 - 18 AAC 76.100 and the financial assistance agreement are met.

(b) The department will make no more than one payment during any 30-day period.
(Eff. 11/19/88, Register 108; am 8/2/97, Register 143)

Authority: AS 46.03.020 S 46.03.032

18 AAC 76.100. Reconsideration of financial assistance request. (a) If the department denies a financial assistance request, the applicant may file a written request for reconsideration with the director within 30 days after receipt of the department's decision.

(b) The director will, in the director's discretion, reconsider a request if the applicant

(1) shows that there has been a substantial change in the circumstances that led to the denial;

(2) provides relevant information to the department that was not available when the denial was made; or

(3) shows that the department's decision contains a technical, legal, or administrative error, or a misinterpretation of data, the correction of which might reverse the decision. (Eff. 11/19/88, Register 108; am 8/2/97, Register 143)

Authority: AS 46.03.020 S 46.03.032

ORGANIZATION OF THE SRF

Seven State government bodies are involved in the operation of the Alaska Clean Water Fund (ACWF). The key organization is at the Department of Environmental Conservation (DEC).

1. The Department of Environmental Conservation (DEC)

- A. The DEC Water Division is responsible for administration, implementation, and coordination of all activities related to the ACWF.
- B. The DEC Division of Information and Administrative Services, will maintain ACWF fiscal records in the State accounting system.

2. The Department of Law

The Assistant Attorney General assigned to DEC's Division of Water will provide legal assistance to the SRF

3. The Department of Revenue

The Division of Treasury is responsible for investment of ACWF funds. All interest earned from such investments will be credited to the Alaska Clean Water Fund account

4. The Alaska State Legislature

The Alaska Legislature is responsible for annual appropriation of state matching funds for federal capitalization grants. In addition, they may review the State required Annual Report (as required under Alaska Statute Section 37.05.035) on the activities of the ACWF. The Division of Legislative Audit will audit the Fund in conjunction with the State-Wide Single Audit the Division conducts each year.

5. The Governor's Office

The Office of Management and Budget is responsible for putting together the Governor's Budget. They will advise the Governor and the Legislature of the amount needed to be appropriate in order to capture each federal capitalization grant.

6. The Department of Administration

The Department of Administration will track ACWF account balances within the Alaska State Accounting System (AKSAS), and interest earned on monies invested by the Department of Revenue.

7. The Department of Natural Resources

The Alaska Coastal Management Program may be used as a technical resource during environmental review of projects to be constructed in coastal areas.

OPERATIONS OF THE ACWF

The loan process begins when potential applicants are solicited to be placed on the ACWF Intended Use Plan (IUP) priority list. This priority list is generated when questionnaires are sent out to communities soliciting eligible projects for funding. Upon receipt of all questionnaires, they are scored and ranked, with higher scored projects placed on the fund's priority list.

After finalizing the IUP, communities with priority-listed projects are contacted by an ACWF Project Engineer for submission of a loan application. If they are ready to proceed with a construction project, an initial inquiry will be made on whether or not they have completed the project's facility plan and environmental review. If not, the Project Engineer will either ask for the submission of a Categorical Exclusion request or Environmental Information Document be completed before continuing the processing of their application. At the end of the Environmental Determination public notice, the facility plan for the project will be reviewed and approved.

Upon receipt of a completed application, the Project Engineer will review the application for completeness and accuracy. After review, the application will be forwarded to the MG&L Program Manager for concurrence, and then forwarded onto the MG&L Loan Program Administrator for final processing. After processing the application, a draft loan offer will be sent out to the community and Project Engineer for review and comment. Once all comments are collected, a final loan agreement will be provided to the Director of the Division of Water for signature, and then onto the community for signature.

Project Engineers will review plans and specifications, and provide loan recipients, as needed, inserts detailing loan program requirements for the bid package. The engineers will also review bid tabulations and concur on the award of the winning bid.

Loan disbursements will be made as costs are incurred. Disbursement request forms along with corresponding documentation are sent to the Project Engineer for approval. Upon approval, the disbursement requests are sent to the MG&L Loan Program Administrator for processing. Cash draws are made in accordance with EPA's electronic funds transfer procedures.

DEC engineers provide project management by concurring on professional engineering service contracts and amendments, reviewing and approving project plans and specifications, concur on construction contracts and approve change orders, determine eligibility on material and equipment procurements, approve force account work and equipment, and, conduct project site inspections.

Prior to project completion, DEC Project Engineers will review and provide approval of User Charge Systems and Sewer Use Ordinances as well as Operation and Maintenance Manuals if applicable.

DEC will maintain project records for disbursement and loan repayments. Fiscal records will be maintained along with other project information. Bonds and other collateral for loans will be held in the Department's vault.

Alaska's Response to Seven Required Elements For an Approvable State Environmental Review Program

In response to the U.S. Environmental Protection Agency's environmental review process requirement for Title VI projects, Alaska has adopted regulations and revised operating procedures to incorporate into its loan program the requirements of 40 CFR Part 6.

These procedures apply to all "tier I" and "tier II" projects receiving financial assistance from the Alaska Clean Water Fund

According to EPR guidance documents, an approvable State environmental review process must incorporate seven elements. Alaska's response to each of these elements follows.

ELEMENT 1: LEGAL FOUNDATION

A. STATE AUTHORITY TO UNDERTAKE ENVIRONMENTAL REVIEWS

The legal foundation authorizing the Alaska Department of Environmental Conservation to undertake environmental reviews for projects receiving financial assistance from the Alaska Clean Water Fund is tiered in nature. Authority is broad based and general in statute and further refined in regulation.

As stated in Alaska Statute 46.03.020, the Department of Environmental Conservation may, among other functions, activities, and duties:

"...Undertake studies, inquiries, surveys or analysis it may consider essential to the accomplishment of the purposes of the department..."

"...Act as the official agency of the State in all matters affecting the purposes of the department under federal laws now or hereafter enacted..."

Alaska Statute 46.03.032 (the enabling legislation of the Alaska Clean Water Fund) states:

"...before making a loan from the Alaskan Clean Water Fund, the department shall", by regulation, specify: (1) standards for the eligibility of borrowers and the type of projects to be financed with loans ;...(6) other relevant criteria, standards, or procedures."

The broad authority of this statute is further define by 18 AAC 76.040 (the State's regulations for the Alaska Clean Water Fund).

Section .040 provides:

- (a) *The applicant shall consult with the department during facility planning to determine the required level of environmental review. The department will assess the possible environmental impacts associated with the project and will notify the applicant of the type of environmental documentation which will be required. Based upon the department's determination, the applicant shall:*

- (1) *submit a request for categorical exclusion with supporting backup documentation as specified by the department;*
 - (2) *prepare an environmental information document in a format specified by the department; or*
 - (3) *prepare an environmental impact statement in a format specified by the department.*
- (b) *If an applicant requests a categorical exclusion, the department shall review the request and based upon project documentation submitted by the applicant shall:*
 - (1) *issue notice of categorical exclusion,*
 - (2) *issue notice of need for preparation of an Environmental Information Document, or*
 - (3) *issue notice of need for preparation of an Environmental Impact Statement.*
- (c) *If an environmental information document is required, the department shall:*
 - (1) *conduct an environmental assessment based upon the applicant's Environmental Information Document and issue*
 - (A) *a draft Finding of no Significant Impact; or*
 - (B) *a notice of need for preparation of an Environmental impact Statement.*
 - (2) *allow a thirty day public comment period, following public notice, for all projects receiving a draft Finding of No Significant Impact. If negative impacts are found during the public process, the department will reassess the project to determine whether an Environmental Impact Statement will be required.*
 - (3) *issue a final Finding of No Significant Impact if no new information is received requiring a reassessment.*

- (d) *If an environmental impact statement is required, the applicant shall*
 - (1) *contact all affected state agencies to determine the scope required of the document;*
 - (2) *prepare and submit a draft environmental impact statement to all affected agencies "for review and comment;*
 - (3) *conduct a public hearing; and*
 - (4) *prepare and submit a final environmental impact statement incorporating all agency and public input for departmental review and approval.*
- (e) *Upon completion by the applicant and approval by the department of all requirements listed in (d) of this section, the department will issue a Record of Decision documenting the mitigative measures which will be required of the applicant. The loan agreement will be conditioned upon such mitigative measures.*
- (f) *If a federal environmental review for the project has been conducted, the department may, in its discretion, adopt the determinations of the federal agency.*
- (g) *Environmental determinations under this section are valid for five years. If a loan application is received for a project with an environmental determination which is more than five years old, the department will reevaluate the project, environmental conditions, and public views and will:*
 - (1) *reaffirm the earlier decision;*
 - (2) *require a revision to the earlier Environmental Impact Statement, Environmental Information Document, or Request for Categorical Exclusion. If a revision is required, the applicant must repeat all requirements outlined in this section.*
 - (3) *require supplemental information to the earlier Environmental Impact Statement, Environmental Information Document, or Request for Categorical Exclusion. Based upon a review of the updated document, the department will issue and distribute a revised notice of categorical exclusion, Finding of No Significant Impact, or Record of Decision.*

B. EXTENT OF ENVIRONMENTAL REVIEW DELEGATION TO LOAN RECIPIENTS

The loan recipient's responsibility for various aspects of the environmental review is detailed in Alaska's environmental review procedures. Generally, the loan recipient's responsibilities during the environmental review process are to:

1. Gather and submit environmental information regarding the project and the surrounding planning area for preliminary departmental review during facility plan development. This will be done after completion of the majority of the facility plan has been developed but before selection of a preferred alternative. This data will be used during the loan recipients' consultation with the Department to determine whether (a) the project is eligible for a categorical exclusion, (b) an Environmental Impact Statement will be required, or (c) an Environmental Information Document will be adequate.
2. Prepare an Environmental Information Document if the Department determines an Environmental Impact Statement will not be required.
3. Prepare (or hire a consultant approved by the Department) an Environmental Impact Statement if the Department determines one will be required.
4. Issue public notices and hold public hearings;
5. Abide by any mitigative measures embodied in a Record of Decision, or a Finding of No Significant Impact and incorporated into the loan agreement.

C. ENVIRONMENTAL REVIEW RESPONSIBILITIES OF THE DEPARTMENT

The Environmental Review responsibilities of the Department include:

1. During early consultation, assess the possible environmental impacts of the project and notify the applicant of the type of environmental documentation which will be required.
2. Review and approve or disapprove environmental review documentation submitted by the applicant.
3. Document determinations in Findings of No Significant Impact, Records of Decision, and public notices.
4. Conduct and document environmental assessments.

5. Adopt the environmental documentation of a federal agency.
6. If an environmental determination is more than five years old, reaffirm the previous determination, require supplemental information from the applicant if necessary, or require the applicant to recommend the environmental review process.
7. Ensure the applicant abides by any mitigative measures embodied in a Finding of No Significant Impact or Record of Decision by incorporating such measures into the loan agreement. If mitigative measures are not met by the applicant, the terms of the loan agreement will have been broken and the department may nullify the loan.

D. NATURE OF PUBLIC LEGAL REMEDIES

As provided for in the Alaska Administrative Procedures Act legal remedies are available to the public to challenge agency determinations (such as an environmental review determination). Due process rights for persons aggrieved by an agency determination are present under AS 44.62.

An agency decision may then be contested by requesting an administrative hearing. If satisfaction is not gained at this level, a petition for reconsideration may be filed. The "final" agency determination may be contested by filing a notice of appeal. At this stage, the review switches from administrative to judicial. Appeals are heard by the Superior Court sitting without a jury. The judgment gained at this level may also be appealed.

ELEMENT 2: INTERDISCIPLINARY APPROACH AND ADHERENCE TO OTHER ENVIRONMENTAL LAWS

A. EXPERTISE

Alaska realizes that responsiveness to a number of federal and State cross-cutting environmental concerns is an integral part of an environmental review process. The State has inter-disciplinary expertise for identifying, evaluating and interpreting these concerns and for evaluating preferred alternatives which avoid, minimize, or mitigate undesirable project impacts.

B. INTERAGENCY REVIEW AND COORDINATION

Upon issuing a notice of need for preparation of an Environmental Impact Statement, the department will contact all potentially affected agencies to initiate the scoping process.

In the event an Environmental Impact Statement is required, the applicant must prepare and submit a draft Environmental Impact Statement to all parties identified during the facility planning process including agencies responding to the scoping process. The applicant's Initial Environmental Impact Statement must address all comments and concerns received from such agencies. The Department will retain oversight of the interagency review process by denying approval of a final Environmental Impact Statement until the applicant has taken such action.

As part of the preparation of an Environmental Information Document or a request for Categorical Exclusion, the applicant must contact all potential affected agencies. The applicant must address all comments and concerns received from such agencies in its Environmental Information Document or Request for Categorical Exclusion.

Subpart C, 40 CFR, Part 6, identifies the scope of federal environmental concerns and objectives. Alaska's expertise in each of these areas is outlined as follows.

1. **Landmarks, Historical, and Archeological Sites**

The Department of Natural Resources, Division of Parks, is responsible for Alaska's participation in the National Register of Historical Places Program established by the National Historical Preservation Act of 1966. The Alaska Historic Sites Advisory Committee evaluates and approves or rejects all potential property nominations to the National Register of Historic Places after determining if they meet the criteria set out in the Code of Federal Regulations.

2. **Endangered Species**

The Alaska Department of Fish and Game has established a program for the continued conservation, protection, restoration, and propagation of fish & wildlife threatened with extinction.

3. **Coastal Zone Management**

Coastal Zone Management is administered by the Office Of Project Management and Permitting (OPMP) within the Department of Natural Resources. The program is overseen under the OPMP by the Alaska Coastal Management Program. Offshore areas, estuaries, wetlands and tide flats, rocky islands and sea cliffs, barrier islands and lagoons, exposed high-energy coasts, rivers, streams, lakes, and important upland habitat are subject to the Alaska Coastal Management program

4. **Fish and Wildlife**

The protection of fish and game species is the responsibility of the Alaska Department of Fish and Game. Before initiating a construction project that may detrimentally affect the habitat of fish or game species, a permit must be obtained. If it is found that the permitted activity may injure or jeopardize the continued viability of fish or game populations or habitat in the area of operation, the permit may be withdrawn, restricted or even terminated.

5. Wild and Scenic Rivers

The identification and protection of wild and scenic rivers in coastal areas is the responsibility of the Alaska Coastal Management Program. Due to the State's demographics, the vast majority of communities which would be eligible to receive an Alaska Clean Water Fund loan are located in coastal areas. A separate State program has not been initiated to ensure noncoastal areas are subject to the wild and scenic rivers review. If an application is received for a project in an area not overseen by the Coastal Management Program, ADEC will consult the U.S. Bureau of Land Management.

6. Air Quality

Permitting, monitoring, and enforcement related to Air Quality are the responsibility of the Alaska Department of Environmental Conservation under the Alaska Air Pollution Control Program.

7. Wetlands and Floodplains

Saltwater and freshwater wetlands are subject to the State's Coastal Zone Management Program. Wetlands and tide flats must be managed to assure adequate water flow, nutrients, and oxygen levels and avoid adverse effects on natural drainage patterns, the destruction of important habitat, and the discharge of toxic substances. Due to the State's demographics, the vast majority of communities which would be eligible to receive an Alaska Clean Water Fund loan are located in coastal areas. A separate State program has not been initiated to ensure noncoastal areas are subject to a wetland and floodplain review. If an application is received for a project in an area not covered by the Alaska Coastal Management program, ADEC; will consult the U.S. Corps of Engineers for a wetlands and floodplains review.

8. Important Farmlands

The State of Alaska does not have a program to review projects in "Important Farmlands." If necessary, ADEC will consult the U.S. Department of Agriculture to ensure the requirements of the Farmland Protection Act are met.

ELEMENT 3: DOCUMENTATION OF PRELIMINARY/FINAL ENVIRONMENTAL REVIEW DETERMINATIONS

Decisions resulting from an environmental review will be formally documented and will include information, processes, and premises, which led to a determination.

Documentation will be maintained to substantiate the lack of, as well as the existence of potential impacts associated with a proposed project. Determinations, which will be formally documented include:

- 1 Categorical Exclusions;
- 2 Findings of No Significant Impact;
- 3 Judgment to reaffirm, or modify a previously issued Categorical Exclusion, Finding of No Significant Impact, or an Environmental Impact Statement following an environmental reevaluation of a proposed project which has an environmental determination that is older than 5 years;
- 4 A determination to proceed, or not to proceed, with a project contained in a record of decision following the preparation of a full Environmental Impact Statement.

ELEMENT 4: PUBLIC OUTREACH AND PARTICIPATION

Public review and commentary are an integral part of Alaska's Environmental review process. Public notices for Categorical Exclusions, Findings of No Significant Impact, Records of Decision, and Adoptions of Previous Determinations will be issued in a newspaper of community wide circulation. Notices will also be mailed to individuals or agencies maintained on the project mailing list. At least one public hearing will be required for each project for which an environmental document is written and for which either a Record of Decision or a Finding of No Significant Impact will be issued. During such hearings, the environmental impacts associated with the project will be addressed. At least a 30-day public comment period will be given for all Findings of No Significant Impact and Records of Decision.

ELEMENT 5: EVALUATION OF ALTERNATIVES

As part of the State's procedures for environmental reviews of projects funded through the Clean Water Fund, evaluation of the alternatives is stressed. A comparative analysis of feasible alternatives, including the no-action alternative is a required element of an approval Environmental Information Document. Each alternative must be evaluated based on beneficial and adverse consequences to the existing environment, the future environment, and on individual sensitive environmental issues that have been identified in advance by the project management or scoped in advance with the assistance of public participation (for an Environmental Impact Statement only). Near-term and long range measures to avoid, minimize, or mitigate adverse impacts will be considered as appropriate. It is further required by the State's environmental review procedures that coordination with other municipal public works projects be considered during the alternatives generation and evaluation stages, including enhancing public recreation and open space opportunities.

An analysis of alternatives must include the following factors:

1. A no-action alternative;
2. Direct and indirect impacts of the complete waste treatment system(s);
3. Existing and future environmental conditions (including all other environmental objectives) affected by the entire system(s); and
4. Land use and other social parameters affected by the entire system(s).

ELEMENT 6: OTHER ENVIRONMENTAL REVIEW PRINCIPLES

The following additional principles will be incorporated into the environmental review:

1. Purpose and need for facilities will be described based on population projection techniques associated with Title II or by a nationally recognized model that is compatible with projections used in State plans developed under the Clean Air Act.
2. Cumulative impacts will be evaluated within the context of complete municipal wastewater treatment system, as well as other public works projects and future community growth (residential, commercial, industrial, etc.), within the study area.

For communities receiving project assistance for the first time, the environmental review will be based on impacts resulting from the entire system. An environmental review study area will be delineated in a manner which encompasses the complete service area of the final system and areas that may be directly or indirectly impacted by the completed system.

In situations involving improvements to be built as separate projects at different times, the environmental review of the first project will consider the anticipated cumulative impacts from later projects. When later projects are begun, the environmental review will only address changes to the anticipated impacts within the entire study area due to changes in the facility plan, design, or the physical environment that occurred in the interim period.

ELEMENT 7: REPORTING REQUIREMENTS

Alaska will meet the annual reporting requirements for the revolving loan program as outlined in the Capitalization Grant Agreement.

Further, the Department of Environmental Conservation realizes EPA Region X will continue overview responsibility of the environmental review process.

ENVIRONMENTAL REVIEW PROCEDURES
FOR
THE ALASKA CLEAN WATER FUND

PURPOSE AND POLICY

Pursuant to Public Law 100-4, the U.S. Environmental Protection Agency (EPA) announced "Initial Guidance-State Water Pollution Control Revolving Funds" in the Federal Register on September 4, 1987. Section III(B)(11) states:

"Under section 602(a) of the CWA, the Administrator is authorized to include specifications in the capitalization grant agreement that are in addition to those required by section 602(b). Pursuant to this authority, EPA will require states to agree to conduct reviews of the potential environmental impacts of each 212 Publicly Owned Treatment Works (POTW) construction projects receiving assistance from the State revolving fund (SRF). As with the Title II requirements, the State may either develop or revise its own environmental review methods or adopt and apply the procedures at 40 CFR Part 6. If the State selects its own method for conducting environmental reviews, it must conform generally to the requirements of the National Environmental Policy Act."

The Alaska Department of Environmental Conservation has adopted regulations and revised operating procedures to incorporate 40 CFR, Part 6, with modification.

This document establishes and defines Alaska's procedures for analyzing environmental impacts of wastewater facilities funded from the Alaska Clean Water Fund. These procedures will be used to prepare and process:

- (1) Environmental Impact Statements/Records of Decision;
- (2) Environmental Information Documents/Environmental Assessments/Findings of No Significant Impact; and
- (3) Categorical Exclusions.

These procedures apply to all projects receiving financial assistance from the Alaska Clean Water Fund.

OVERVIEW

An environmental review is required prior to:

- Approval of a facility plan or a plan amendment;
- Signing of a Loan Agreement for a project where significant change has occurred in its scope and possible environmental impact since a prior environmental review;
- Signing of a Loan Agreement for a project with an environmental review determination older than five years.

The environmental review process includes:

1. Consultation

The loan applicant should consult with the Department as early as possible to determine whether a project is eligible for a Categorical Exclusion from the remaining environmental review requirements, determine alternatives to the proposed project to be evaluated, identify potential open space and recreational opportunities, and/or determine the need for an Environmental Impact Statement.

2. Documenting Environmental Information

If a project is not eligible for a Categorical Exclusion, the applicant must prepare an Environmental Information Document or an Environmental Impact Statement. The decision on which document will be required will depend upon the Department's determination of potential negative environmental impacts.

3. Assessing Environmental Impacts

A. Environmental Information Document

The Department will review the applicant's Environmental Information Document. Based upon an assessment of the environmental impacts, the Department will issue an Environmental Assessment and a Finding of No Significant Impact, or a Notice of need for preparation of an Environmental Impact Statement and a Record of Decision.

B. Environmental Impact Statement

The Department will review the applicant's Environmental Impact Statement. Based upon the documents:

1. responsiveness to public and agency comment;
2. description of the affected environment;
2. comparative analysis of all alternatives; and
4. description of the environmental consequences of the chosen alternative

the Department will issue an Record of Decision or a Notice of need for revision of the Environmental Impact Statement.

4. Monitoring

The construction and post-construction operation and maintenance of the facilities will be monitored to ensure implementation of mitigation measures identified in a Finding of No Significant Impact, Record of Decision, or loan contract.

5. Other Determinations

An environmental determination may be revoked at any time if the Department ascertains the project or environmental conditions have changed significantly.

If a project has not received financial assistance from the Department within five years of an environmental determination, the Department will reevaluate the project and environmental conditions. Based upon this review, the Department will:

1. issue a notice of reaffirmation;
2. withdraw the previous determination and issue a notice of need for preparation of an Environmental Impact Statement or an Environmental Information Document; or
3. require supplemental information to the documentation.

CONSULTATION

The loan applicant should consult the Department early during facility planning to identify environmental effects, avoid delays, and resolve conflicts associated with the project. The Department will advise the applicant whether the project may be eligible for categorical exclusion. If a Categorical Exclusion is granted, the loan applicant will not be required to prepare an Environmental Information Document. If a Categorical Exclusion is not granted, this evaluation may be used to determine the scope of the Environmental Information Document required and/or to determine the need for an Environmental Impact Statement.

The Department will review environmental Information submitted by the loan applicant after completion of the majority of the Environmental Information Document and prior to selecting the preferred alternative.

After the Department's review, the loan applicant will be informed of:

1. The Department's preliminary position regarding the preparation of an Environmental Impact Statement;
2. The relationship between the facility planning and the environmental review processes; and
3. A contact person for further information

CATERGORICAL EXCLUSIONS

1. **The following projects are eligible for categorical exclusion:**
 - A. Minor rehabilitation, functional equipment replacement, and construction of new ancillary facilities adjacent or appurtenant to existing facilities;
 - B. Projects for which the facilities planning is consistent with category (A) above and which do not affect the degree of treatment or capacity of the existing facility including, but not limited to, infiltration and inflow corrections, replacement of existing facilities, equipment, or structures; and the construction of small structures;
 - C. Project in sewerred areas of less than 10,000 persons which are for minor upgrading and minor expansion; and
 - D. Projects in unsewered areas of less than 10,000 persons where on-site technologies are proposed.
2. **An environmental review will be required for any of the above categories if the Department determines:**
 - A. The facility will create a new, or relocate an existing, discharge to surface or ground waters;
 - B. The facility will result in substantial increases in the volume of discharge or the loading of pollutants from an existing source or from a new facility to receiving waters; or
 - C. The project will directly or indirectly affect:
 1. cultural resource areas, such as archeological and historic sites;
 2. endangered or threatened species and their critical habitats;
 3. environmentally important natural resource areas, such as floodplains, wetlands, aquifer recharge zones; or
 4. the action is expected to have a significant adverse effect on the quality of the environment, either individually, cumulatively over time, or in conjunction with other federal, State, local, or private actions.

3. Applicants seeking a Categorical Exclusion must provide the following documentation to the Department:

- A. A brief, complete description of the proposed project and its costs;
- B. A statement indicating the project is cost-effective and that the applicant is financially capable of constructing, operating, and maintaining the facilities; and
- C. Plan map(s) of the proposed project showing:
 - 1. location of all construction areas;
 - 2. planning area boundaries; and
 - 3. any known environmentally sensitive areas.

4. Departmental determinations related to requests for Categorical Exclusions Include:

- A. **The Department will review the applicant's request for categorical exclusion and supporting documentation and will:**
 - 1. Issue a Notice of Categorical Exclusion
 - 2. Issue a Notice of Need for Preparation of an Environmental Information Document; or
 - 3. Issue a Notice of Need for Preparation of an Environmental Impact Statement.
- B. **Proceeding with Loan Commitments.** Once the Categorical Exclusion becomes effective, a loan may be made; however, if the Department later determines the project or environmental conditions have changed significantly, the exclusion will be revoked.
- C. **Specific Mitigation Measures.** Prior to facility plan approval, The Department will ensure that effective mitigation measures identified in the notice of Categorical Exclusion will be implemented by the loan applicant. This will be done by revising the facility plan, including conditions in the loan agreement, or initiating other steps to mitigate adverse effects. Care will be exercised to assure that if a condition is imposed in a loan agreement, the applicant possesses the authority to fulfill the conditions.

- D. For all Categorical Exclusion determinations** on projects waiting five or more years for financial assistance, the Department will reevaluate the project and environmental conditions. Prior to loan award the Department will:
- 1. Reaffirm:** Issue a notice reaffirming the Department's decision to proceed with the project without the need for further environmental review;
 - 2. Reassess:** Withdraw the Categorical Exclusion issue a notice of need for preparation of an Environmental Information Document or an Environmental Impact Statement; or
 - 3. Supplement:** Require an update of the Request for Categorical Exclusion and supporting documentation, issue a revised Categorical Exclusion.
- E. Adoption of a federal determination.** In the event a Categorical Exclusion has been previously granted for the project by a federal agency, the Department may adopt such determination through a Notice of Adoption.

ENVIRONMENTAL ASSESSMENTS/FINDINGS OF NO SIGNIFICANT IMPACT

1. Review of Completed Facilities Plan:

The Department will review the completed facility plan, with particular attention to the Environmental Information Document and its use in the development of alternatives and the selection of a preferred alternative. An adequate Environmental Information Document will be an integral part of any facility plan for projects receiving financial assistance from the Alaska Clean Water Fund. The Environmental Information Document will be of a scope to enable the Department to assess the appropriateness of issuing a Finding of No Significant Impact.

2. Environmental Environmental Document and Information Assessment:

The Environmental Information Document must cover all potentially significant environmental impacts. The Department will review the Environmental Information Document prior to facility plan approval for compliance with environmental review requirements. Each of the following subjects must be addressed:

- A. Description of the Existing Environment.**
- B. Description of the Future Environment without the project.**
- C. Purpose and Need for Wastewater Treatment in the Planning Area.** The severity and extent of any existing public health or water quality problems will be included.
- D. Documentation.** Citations to information used will be referenced. Information sources may include local, regional, State, and federal agencies with responsibility or interest in environmental concerns.
- E. Analysis of Alternatives.** A comparative analysis of feasible alternatives, including the no-action alternative. Alternatives will be screened with respect to direct, indirect, and cumulative environmental effects, and compliance with regulatory requirements. Attention will be given to induced impacts and analysis of potential recreation and open-space opportunities. The reasons for rejecting alternatives must be presented along with significant environmental benefits precluded by rejection of the alternative. When relevant to the project, as determined by the Department, the analysis must consider:
 - 1. flow and waste reduction measures including infiltration/inflow reduction and pretreatment requirements;
 - 2. appropriate water conservation measures;
 - 3. alternative locations, capacities, and construction phasing of facilities;
 - 4. alternative waste management techniques, including pretreatment, treatment and discharge, wastewater reuse, land application, and individual systems;

5. alternative methods for management of sludge and other residual materials, including utilization options such as land application, composting, and conversion of sludge for marketing as a soil conditioner or fertilizer;
6. improved effluent quality through more efficient operation and maintenance;
7. appropriate energy reduction measures; and
8. multiple use, including recreation, other open space, and environmental education.

F. Evaluation of Environmental Consequences of Proposed Action.

The range of impacts of the proposed action must be discussed, including:

1. measures to mitigate adverse impacts;
2. irreversible or irretrievable commitments of resources to the project; and
3. the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity. Specific requirements, including loan conditions and area wide waste treatment management plan requirements, must be identified and referenced.

Identification of structural and nonstructural measures related to the facility plan to mitigate or eliminate adverse effects on the environment will be addressed during the environmental review. Structural provisions may include changes in facility design, size, and location; nonstructural provisions may include staging facilities, monitoring, and enforcement of environmental regulations, and local commitments to develop and enforce land-use regulations.

An Environmental Assessment of the proposed project, supported by the applicant's Environmental Information Document, will be conducted by the Department. This Assessment will determine whether anticipated impacts are significant and what changes may be made in the project to eliminate adverse impacts. In addition, the Department may require the applicant to submit additional information or undertake additional public participation steps. The Department will draft a report on the Environmental Assessment and include the following information:

1. purpose and need for the proposed project;
2. detailed description of proposed project, including its costs;
3. alternatives considered and the reasons for their rejection or acceptance;
4. existing environment;
5. potential adverse impacts and mitigative measures; and
6. any proposed conditions to the provision of financial assistance and means provided to monitor compliance of these conditions.

3. Finding of No Significant Impact.

If, based upon the Department's Environmental Assessment, it is determined that an Environmental Impact Statement will not be required, the Department will issue a Finding of No Significant Impact. Finding of The Finding of No Significant Impact will include a brief description of the proposed project, its costs, any mitigative measures required by the Department, and a statement that comments supporting or disagreeing with the Finding of No Significant Impact may be submitted for consideration by the Department. An Environmental Assessment will be attached to the Finding of No Significant Impact when mitigative measures are specified in the Finding of No Significant Impact as conditions of a loan award.

- A. Public Participation.** The Finding of No Significant Impact will be distributed to those parties, governmental entities, and agencies that may have an interest in the proposed project. No action regarding approval of the facilities plan or the provision of financial assistance will be taken by the Department for at least 30 days after the issuance of the Finding of No Significant Impact.

- B. Specific Mitigation Measures.** Prior to facility plan approval, the Department will ensure that effective mitigation measures identified in the Finding of No Significant Impact will be implemented by borrower. This will be done by revising the facility plan, initiating other steps to mitigate adverse effects, or including conditions in the loan agreement. Care will be exercised to assure that if a condition is imposed in a loan agreement, the applicant possesses the authority to fulfill the conditions.
- C. Proceeding with Loan Commitments.** Once the issued Finding of No Significant Impact become effective, financial assistance may be awarded; however, if the Department later determines the project or environmental conditions have changed significantly, further environmental review may be required.
- D. For all Environmental Assessments/Findings of Significant Impact** on projects waiting five or more years for financial assistance, the Department will reevaluate the project, environmental conditions, and public views. Prior to loan award the Department will:
1. **Reaffirm:** Issue a public notice reaffirming the Department's decision to proceed with the project without the need for further environmental review;
 2. **Reassess:** Withdraw the Finding of No Significant Impact and publish a notice of need for preparation of an Environmental Impact Statement followed by the preparation, issuance, and distribution of the Environmental Impact Statement\Record of Decision; or
 3. **Supplement:** Require an update of the Environmental Information Document, issue and distribute a revised Finding of No Significant Impact.
- E. Adoption of Federal Documentation.**
In the event an Environmental Assessment has previously been written and a Finding of No Significant Impact issued for the project by a federal agency, the Department may adopt the federal Environmental Assessment through a Notice.

ENVIRONMENTAL IMPACT STATEMENTS

1. Criteria:

A. The Department will assure that an Environmental Impact Statement will be prepared and issued when it is determined that the treatment works or collector system will cause any of the following conditions to exist:

1. the project will significantly affect the pattern and type of land use, or growth and distribution of population;
2. the effects of any structure or facility constructed or operated will conflict with local, regional, or State land use plans or policies;
3. the project will have significant adverse effects on wetlands, farmland, or a floodplain, including indirect and cumulative effects, or any major part of the project will be located in wetlands, farmlands, or a floodplain;
4. the project will significantly affect, or will be located in a habitat of a bird or animal identified on the Department of the interior's or State's threatened and endangered species list;
5. the project will directly, indirectly, or cumulatively have significant adverse effects on parklands, preserves, other public lands, or areas of recognized scenic, recreational, archaeological, or historic value;
6. the project will directly or through induced development have a significant adverse effect on local ambient air quality and noise levels, surface or groundwater quality or quantity / water supply, fish, shellfish, wildlife, and their natural habitats;
7. the treated effluent is being discharged into a body of water where the present classification is being challenged as too low to protect present or recent uses, and the effluent will not be of sufficient quality or quantity to meet the requirements of these uses;
8. the project is highly controversial; or
9. the project, in conjunction with related federal State, or local resource projects, produces a significant cumulative impact.

2. Responsibility

The Department of Environmental Conservation will do the following:

- A. Notice of Intent.** If it is determined an Environmental Impact Statement will be required, the Department will prepare and distribute a Notice of Intent.
- B. Scoping.** As soon as possible after publication of the Notice of Intent, the Department will publish and mail a project overview to affected federal, State, and local agencies, and other interested parties, asking for comment on:
 - 1. significance and scope of issues to be analyzed, in depth, in the Environmental Impact Statement;
 - 2. preliminary range of alternatives to be considered;
 - 3. potential cooperating agencies and the information or analyses that may be needed from them;
 - 4. method for Environmental Impact Statement preparation and the public participation strategy;
 - 5. consultation requirements of other environmental laws; and
 - 6. relationship between the Environmental Impact Statement and the completion of the facility plan and any necessary coordination arrangements between the preparers of both documents.
- C. Preparation of a List of Evaluators.** The Department will independently evaluate the scope and contents of the Environmental Impact Statement prior to its approval. The Department officials who undertake this evaluation must be listed.
- D. Issue Notices.** The Department will issue public notices in a newspaper of community wide circulation. Determinations for which public notice will be issued include Records of Decision, Findings of No Significant Impact, and Eligibility for Categorical Exclusion.

The applicant will do the following:

- A. Identification and Evaluation of Alternatives.** Immediately following the scoping process, the applicant will identify and evaluate potential viable alternatives to adequately address the range of issues identified in the scoping process. Additional issues and alternatives may be addressed, or others eliminated, during this process and the reasons documented as part of the Environmental Impact Statement.
- B. Preparation of a draft Environmental Impact Statement.** Following the scoping process, the applicant shall prepare (or hire a consultant approved by the Department to prepare) a draft Environmental Impact Statement which addresses the criteria and standards as provided in these procedures.
- C. Provide copies of the Draft Environmental Impact Statement** to all federal, State, and local agencies and others with an interest in the project. The Department will provide guidance to the applicant regarding coordination requirements.
- D. Solicitation of Public Comment.** The applicant must issue public notice, provide a 30-day comment period, and conduct a public hearing based on the draft Environmental Impact Statement.
- E. Preparation of a final Environmental Impact Statement.** Following completion of the public , comment period, the applicant must prepare and submit a final Environmental Impact Statement for Departmental review, incorporating all comments received from affected agencies and the public during the public comment period and public hearing.
- F. Abide by mitigative measures required in a Record of Decision.**

3. Format:

The Environmental Impact Statement must contain a concise analysis and clear presentation of alternatives, including the proposed action and its environmental, economic, and social impacts. The following standard format must be followed:

- A. Cover sheet;**
- B. Executive summary;**

6. Record of Decision and Identification of Mitigation Measures.

- A. Record of Decision.** After a final Environmental Impact Statement has been prepared and accepted, the Department will issue a Record of Decision prior to, or in conjunction with, approval of the facility plan. The Record of Decision will include identification of mitigation measures derived from the Environmental Impact Statement process, including loan conditions, necessary to minimize the adverse impacts of the selected alternative.
- B. Specific Mitigation Measures.** Prior to facility plan approval, the Department will ensure that effective mitigation measures identified in the Record of Decision will be implemented by the borrower. This will be done by revising the facility plan, initiating other steps to mitigate adverse effects, or including conditions in the loan agreement. Care will be exercised to assure that if a condition is imposed in a loan agreement, the applicant possesses the authority to fulfill the conditions.
- C. Proceeding with Loan Agreements.** Once the Record of Decision has been prepared on the selected or preferred alternative(s), a loan may be made without further environmental review, unless The Department determines:
1. the project or the environmental conditions described in the Environmental Impact Statement have changed significantly; or
 2. more than five years have elapsed since the approval of the Environmental Impact Statement.
- D. For all Environmental Impact Statement/Record of Decision Determinations** on projects waiting five or more years for construction loans, the Department will reevaluate the project, environmental conditions, and public views. Prior to loan award the Department will:
1. **Reaffirm:** Issue a public notice reaffirming The Department's decision to proceed with the project without the need for further environmental review;
 2. **Reassess:** Withdraw and publish a notice of need for preparation of an Environmental Impact Statement followed by the

preparation, issuance and distribution of the Environmental Impact Statement/Record of Decision; or

3. **Supplement:** Require an update of the Environmental Impact Statement, issue and distribute a revised Environmental Impact Statement/Record of Decision.

- E. **Adoption of a Federal Determination.** In the event an Environmental Impact Statement has been required by a federal agency, the Department will not duplicate any federal effort in regard to the preparation of an Environmental Impact Statement. The Department will adopt the federal documentation in a formal Notice of Adoption.

MONITORING FOR COMPLIANCE

The Department will ensure adequate monitoring of mitigation measures identified in a Categorical Exclusion, Finding of No Significant Impact, Record of Decision, and incorporated into a loan agreement.

If the borrower fails to comply with loan conditions and thereby breaks the terms of the Agreement, the Department may nullify the loan, withhold payments, and/or initiate legal procedures.

PUBLIC PARTICIPATION

The Department will allow for public review and comments throughout the environmental review process. Public notices for Categorical Exclusions, Findings of No Significant Impact, and Records of Decision will be issued in a newspaper of community-wide circulation. Notices will also be mailed to individuals or agencies maintained on the project mailing list. At least one public hearing will be required for each project for which an environmental document is written and for which either a Record of Decision or a Finding of No Significant Impact will be issued. During such hearings, the environmental impacts associated with the proposed project will be addressed. At least a 30 day public comment period will be given for all Findings of No Significant Impact and Records of Decision.

(f) "Participation Payment" means the amount per year necessary to amortize the loan.

(g) "Project Facility" means the facility to be constructed pursuant to this Agreement as described generally in the Approved Application dated Month Day, 200X and described in detail in the project's facility plan. The project will

SECTION II - RIGHTS OF ACCESS

Section 2.1. The Department has the right at all reasonable times to enter the project site, for the purpose of inspecting the facility.

SECTION III - ACQUISITION OF PROJECT SITE, CONSTRUCTION OF PROJECT FACILITY, LOAN DISBURSEMENT, AND PAYMENT OF COSTS

Section 3.1. With the exception of land easements, all real estate and personal property constituting the Project Facility and the project must belong to the City/Municipality/Borough.

Section 3.2. In connection with the construction of the project facility, the City/Municipality/Borough agrees that:

(a) The City/Municipality/Borough will not begin construction of the Project Facility until the Department has reviewed and approved the plans and specifications for the project. In its approvals the Department may specify changes or conditions to the plans and specifications. The Department must approve any subsequent changes to, or deviations from, approved plans.

(b) The City/Municipality/Borough will ensure that contract wages paid for the construction of the Project Facility conform to the prevailing wage rates established for the locality by the Alaska Department of Labor under AS 36.05.010, and with any applicable federal standards under 42 U.S.C. 300j-9(e).

(c) Any construction contract estimated to equal or exceed \$50,000 will be awarded through a competitive bidding process and any construction contract estimated to be less than \$50,000 may be negotiated if the Department approves the solicitation and negotiation procedures.

(d) All construction contracts and contractors' estimate forms will be prepared so that materials and equipment may be readily itemized as to allowable project costs and noneligible costs.

(e) Any change in a construction contract that will alter the contract specifications, time, price or will substantially modify the proposed treatment process must be submitted to the Department for approval if the City/Municipality/Borough wishes to have the modifications considered loan eligible.

(f) The construction of the Project Facility will conform to applicable federal, state, and local laws, ordinances, and regulations.

(g) The City/Municipality/Borough will proceed expeditiously and complete the Project Facility in accordance with the Approved Application, project schedule, surveys, plans, profiles, cross-sections, specifications, and amendments.

Section 3.3. The City/Municipality/Borough agrees to administer this loan in a non-discriminatory manner. No person shall be discriminated against based on race, religion, color, national origin, gender or disability.

Section 3.4. When applicable, the City/Municipality/Borough will comply with Title I-Employment of the Americans with Disabilities Act of 1990 (P.L. 101-336) and in accordance with Title I of that Act, shall not discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

Section 3.5 When applicable, the City/Municipality/Borough will comply with Title II-Public Services of the Americans with Disabilities Act of 1990 (P.L. 101-336) and in accordance with Title II of the Act, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Section. 3.6 When applicable, the City/Municipality/Borough will comply with Title II, Part 35, Section 35.151 of the Act "New Construction and Alterations," (a) Design and construction: Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992. (b) Alteration: Each facility or part of a facility altered by, on behalf, of or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992. (c) Accessibility standards: Design, construction or alteration of facilities in

conformance with the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR part 101-19.6) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) (Appendix A to 28 CFR Part 36) shall be deemed to comply with the requirements of this section with respect to those facilities, except that the elevator exemption contained at section 4.1.3(5) and section 4.1.5(1)(j) of ADAAG shall not apply.

Section 3.7 When applicable, the City/Municipality/Borough will comply with Title III, Part 36, Section 36.401 of the Act "New Construction." Except as provided in paragraph (b) and (c) of the Act, discrimination for purposes of this part includes a failure to design and construct facilities for first occupancy after January 26, 1993, that are readily accessible to and usable by individuals with disabilities.

Section 3.8 When applicable, the City/Municipality/Borough will comply with Title III, Part 36, Section 36.402 of the Act "Alterations" (a) General: Any alteration to a place of public accommodation or a commercial facility, after January 26, 1992, shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. (b) Alteration: An alteration is a change to a place of public accommodation or a commercial facility that affects or could affect the usability of the building or facility or any part thereof.

Section 3.9. The City/Municipality/Borough shall fully comply with Subpart C of 40 CFR Part 32, entitled "Responsibilities of Participants Regarding Transactions." The City/Municipality/Borough is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 40 CFR Part 32, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. The City/Municipality/Borough is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. The City/Municipality/Borough acknowledges that failing to disclose the information required under 40 CFR 32.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Section 3.10. The City/Municipality/Borough will comply with the minority and women owned business requirements of the State Revolving Loan Fund program, and will require its contractors to also meet these requirements.

Section 3.11. The City/Municipality/Borough will require each construction contractor to furnish a performance and payment bond in an amount at least equal to 100 percent of the contract price.

Section 3.12. The City/Municipality/Borough will require its contractors and subcontractors to maintain workers compensation, public liability, property damage, and vehicle liability insurance. Until the Project Facility is completed by the City/Municipality/Borough, the City/Municipality/Borough (or at the option of the City/Municipality/Borough, the contractor) will maintain insurance for the loss of the facility for the benefit of the Department, the City/Municipality/Borough, the prime contractor, and all subcontractors, as their interests in the Project Facility may appear.

Section 3.13. Subject to the terms and conditions of this Agreement, the eligible project costs less other funding sources will be disbursed by the Department upon submittal and departmental approval of invoices.

Section 3.14. If this project finishes under the estimated cost of construction, it will be funded only as necessary to complete the project.

Section 3.15. Upon completion of the Project Facility, the City/Municipality/Borough shall provide a statement to the Department of the project final costs by category of expenditure, including but not limited to costs for: administration, design, construction engineering, construction and equipment.

SECTION IV - PARTICIPATION PAYMENTS BY THE CITY/MUNICIPALITY/BOROUGH

Section 4.1. This loan is made to the City/Municipality/Borough from the Alaska Clean Water Fund for the maximum amount of \$_____.

Section 4.2. The City/Municipality/Borough agrees to repay the principal amount and the finance charge rate on all cash draws made to the City/Municipality/Borough according to the repayment schedule, which will be prepared by the Department and confirmed by the City/Municipality/Borough following initiation of operation of the facility. The repayment schedule for the actual amount of loan payments made to the City/Municipality/Borough will provide that:

(a) the City/Municipality/Borough will pay a finance charge of 1.0 / 1.50 percent on each disbursement. Accrual of the finance charge will begin one year after the date of the first disbursement to the City/Municipality/Borough.

(b) the loan amount will be paid back within ____ years following initiation of operation of the facility. Repayment of the loan will be made with either equal annual principle payments plus the finance charge or equal annual total payments including the finance charge. Other repayment methods may be negotiated with the Department.

(c) the first loan repayment will be due one year following substantial completion and initiation of operation of the facility.

Section 4.3. The City/Municipality/Borough assures the Department that the City/Municipality/Borough has not pledged revenues for the repayment of its loan that have been previously pledged or encumbered, unless specifically set forth in the City/Municipality/Borough's approved application. The pledged revenues for repayment of the loan and each separate source of revenue are specifically identified and described in the City/Municipality/Borough's submitted application.

Section 4.4. In the event that any of the revenues pledged by the City/Municipality/Borough for the repayment of its loan are encumbered by a lien of any prior outstanding debt, the City/Municipality/Borough will furnish the Department with legal assurance that the excess of such prior encumbered revenues are legally available for pledging to the Alaska Clean Water Fund.

Section 4.5. The City/Municipality/Borough agrees that if pledged revenues are insufficient to meet any loan payment to the Department when due, the City/Municipality/Borough will pay the deficiency in its loan payment from any legally available funds accruing to or in the possession of the City/Municipality/Borough. Repayment of the loan which is the subject of this loan agreement shall not be a direct and general obligation of the City/Municipality/Borough.

Section 4.6. If a payment is received by the Department more than 30 days after it is due, the City/Municipality/Borough agrees to pay a late charge of five percent of the payment. Interest on the unpaid balance will continue to accrue at the finance charge rate and must be paid in addition to the late charge. Payments in arrears over 90 days, will be referred to the Attorney General's Office for collection.

Section 4.7. The City/Municipality/Borough agrees that it will separately account for all monies received from the Alaska Clean Water Fund and will maintain project accounts in accordance with generally accepted governmental accounting principles.

Section 4.8. If, prior to completion of the contract period, the Project Facility is damaged or destroyed, the City/Municipality/Borough is liable to the Department for all amounts due under this Agreement.

Section 4.9. The provisions of AS 37.15.575 relating to state aid interception apply to the loan made under this agreement.

SECTION V - MAINTENANCE, OPERATION, INSURANCE and AUDIT

Section 5.1. The City/Municipality/Borough agrees to prepare a manual for operation and maintenance of the facility that is approved by the Department.

Section 5.2. The City/Municipality/Borough must ensure that a Department approved sewer use ordinance and a user charge system are adopted prior to initiation of operation of the facility.

Section 5.3. The City/Municipality/Borough shall initiate operation of the Project Facility immediately upon completion of construction and may not discontinue operation of the Project Facility without Departmental approval. Within one year after the initiation of operation, the City/Municipality/Borough must certify to the Department that the facility is performing up to design standards. The City/Municipality/Borough must ensure that sufficient qualified operating personnel certified by the State of Alaska will be retained to operate the Project Facility. Nothing contained in this Agreement shall be construed as an obligation or pledge of the City/Municipality/Borough to appropriate or expend general funds and general revenues of the City/Municipality/Borough to operate or maintain the Project Facility.

Section 5.4. The City/Municipality/Borough agrees to insure the Project Facility against loss or damage in an amount at least equal to the loan amount specified in Section 4.1.

Section 5.5. An insurance policy issued pursuant to Section 5.4 must be written or endorsed to make losses payable to the Department and the City/Municipality/Borough as their interests may appear. The interests of the Department are limited to the unpaid principal balance of the loan and any finance charge and penalties accrued as of the date such loan may be paid in full as a result of any insurance payoff, following destruction or damage to the facility.

Section 5.6. In the event the City/Municipality/Borough fails to maintain the full insurance coverage required by this Agreement, the Department may take out the required policies of insurance and pay the premiums. All amounts so advanced by the Department will become an additional obligation of the City/Municipality/Borough to the Department.

Section 5.7. The City/Municipality/Borough agrees to submit a financial report for the Project Facility for Departmental approval within one year after initiation of operation of the facility. A project audit, performed by the Department, will cover the entire multi-year project.

Section 5.8. Financial assistance received under this loan agreement is

considered federal assistance and is to be included when determining the threshold amount for a Federal single Audit. However, financial assistance received under this loan agreement is not subject to State Single Audit.

SECTION VI - MISCELLANEOUS PROVISIONS

Section 6.1. Any disbursement or repayment made under this Agreement by either party to the other, shall be delivered by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and,

(a) if addressed to the Department, will be sent or delivered personally to:

Alaska Department of Environmental Conservation
Division of Water - Alaska Clean Water Fund
410 Willoughby Avenue, Suite 303
P.O. Box 111800
Juneau, Alaska 99801

(b) if addressed to the City/Municipality/Borough, will be sent to or delivered personally to:

City/Municipality/Borough of _____
_____, AK 99____

Section 6.2. Departmental approvals, required by this Agreement will not be unreasonably withheld.

Section 6.3. This Agreement is made subject to and conditional upon the availability of funds.

Section 6.4. This Agreement is effective as of the date set forth above and continues in full force and effect until the final day of the Contract Period.

Section 6.5. This Agreement is binding upon the parties specified below, and to any person, office, or board succeeding either of the parties. This Agreement may not be assigned by the City/Municipality/Borough without written consent of the Department.

Section 6.6. The Department may cancel all or any part of this agreement if:

(a) Any representation or other statement made by the City/Municipality/Borough to the Department in connection with its application for a loan from the Alaska Clean Water Fund is incorrect or incomplete in any material respect;

(b) The City/Municipality/Borough has violated commitments made by it

in its Approved Application and supporting documents, has not adhered to the regulations of the Alaska Clean Water Fund (18 AAC 76), has violated any of the terms of this Loan Agreement; or

(c) The financial position of the City/Municipality/Borough has, in the opinion of the Department, suffered a materially adverse change.

Section 6.7. No portion of this loan amount may be used for lobbying or propaganda purposes as prohibited by 18 U.S.C. Section 1913 or Section 607(a) of Public Law 96-74.

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By: _____
_____, Director
Division of Water

**ACKNOWLEDGEMENT
STATE OF ALASKA
_____ Judicial District**

The foregoing instrument was acknowledged before me this _____ day of
Month, 200X

Notary Public, State of Alaska
My commission expires: _____

CITY/MUNICIPALITY/BOROUGH OF

By: _____

**ACKNOWLEDGEMENT
STATE OF ALASKA
_____ Judicial District**

The foregoing instrument was acknowledged before me this _____ day of
Month, 200X

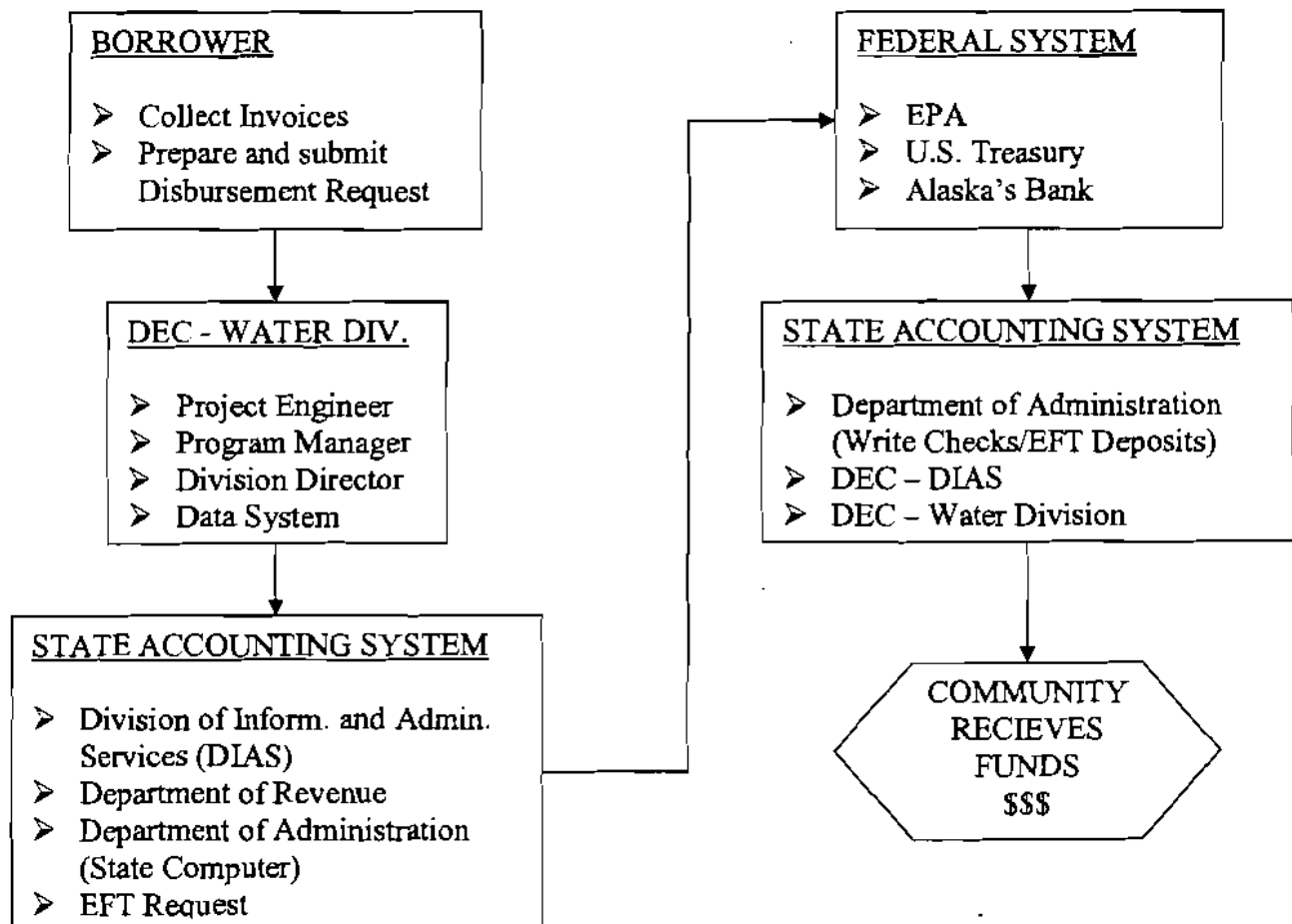
Notary Public, State of Alaska
My commission expires: _____

DISBURSEMENT PROCESS

The Department will supply borrowers with disbursement request forms. Loan disbursements will be made as costs are incurred. Requests for disbursement will be processed as quickly as possible by the Department. Requests will be reviewed for eligibility to assure that costs are adequately documented. Project Engineers will review each request accordingly, and upon completion of the review prepare a Disbursement Request Memo to the Loan Administrative Assistant for payment processing.

Once the Disbursement Request Memo is received by the Loan Administrative Assistant in the State's Main Program Office, the documents will be reviewed for content accuracy by the loan administrative staff, and upon approval, a disbursement will be prepared. All disbursement documents will become a permanent part of the project file.

DISBURSEMENT FLOW CHART



ANNUAL REPORT

Each year, 90 calendar days after the end of the fiscal year in which the payments are received, ADEC will submit an annual report to the EPA Regional Administrator of Region X on the use of loan funds and how the goals and objectives defined in the Intended Use Plan have been met.

The report will contain the following sections:

- Introduction
- Executive Summary
- Short Term Goals
- Long Term Goals
- Details of Accomplishments
 - Fund Financial Status
 - Binding Commitments
 - Source of Funds
 - Cash Flows
 - Administrative Set-Aside
 - Disbursements
 - Fees
 - Audit Reports
 - Assistance Activities
 - Provisions of the Operating Agreement and the Conditions of the Capitalization Grant
 - Provide a State Match
 - Binding Commitments within One Year
 - Expeditious and Timely Expenditure
 - First Use of Funds for Enforceable Requirements
 - Compliance with Title II Requirements
 - MBE/WBE Requirement
 - Other Federal Authorities
 - State Environmental Review Process

- Program Changes
- Exhibits
 - Loan Specific Information
 - Capitalization Grant History
 - Actual and Projected Disbursements
 - Assistance Amount by Needs Category
 - Notice of Public Participation
 - Environmental Benefit "One Pager"
 - Disbursement History
 - Financial Statements

State of Alaska
Memorandum of Understanding
between
Department of Revenue
and
Department of Administration

WHEREAS, Attorney General's opinions, file nos. 366-103-85 and 366-171-85, authorize the crediting of investment income to trust funds or accounts managed by the State, the fish and game fund, and the power development revolving loan fund (hereinafter, "Funds"); and

WHEREAS, these Funds are commingled for investment purposes with the State general fund and other funds in the General Investment Fund; and

WHEREAS, the Department of Revenue and the Department of Administration desire to formalize their agreement as to

- a. their respective responsibilities for crediting investment income of the General Investment Fund to these Funds; and
- b. the valuation of assets of these Funds in the event of their transfer from the General Investment Fund;

NOW, THEREFORE, BE IT RESOLVED BY the Department of Revenue and the Department of Administration that:

1. The Department of Revenue, Treasury Division will determine monthly the figures for:
 - (a) the book value at the end of the month of the marketable securities portfolio of the General Investment Fund; and
 - (b) the income during the month on the marketable securities portfolio of the General Investment Fund, including realized and accrued income, amortization of premiums, and accretion of discounts but excluding unrealized gains or losses attributable to changes in market values of securities.
2. The Department of Revenue, Treasury Division will calculate the amount of monthly investment income to be credited to each Fund and the end of month balance for each Fund by:

STATE OF ALASKA
DEPARTMENT OF REVENUE

M E M O R A N D U M

TO: Keith Busch, Director
Division of Finance
Department of Administration

FROM: Milt Barker *MB*
Deputy Commissioner
Treasury Division

DATE: July 2, 1987

RE: Memorandum of Understanding for Investment Income Credited to
Accounts in the General Investment Fund - Alaska Clean Water Fund

I attach a revised Attachment A to the July 1, 1986 Memorandum of Understanding between the Departments of Revenue and Administration (also attached) that reflects the addition of the Alaska Clean Water Fund to the list of accounts in the General Investment Fund that are to be credited with interest.

I would also like to call attention Section 2(a)(ii) of the Memorandum which requires pro-rating interest earned on the ratio of account balances to what the General Investment Fund balance would be exclusive of, or prior to the addition of, that month's income. The pro-rationing is not done on the simple ratio of an account's balance relative to the General Investment Fund balance.

Also attached is a set of documents from the Department of Environmental Conservation relating to the Alaska Clean Water Fund.

AS 46.03.032 (a) as enacted by Chapter 40, SLA 1987 (HCS SB 167 (Resources) effective 6-6-87) generally requires, pursuant to the requirements of Section 603(d)(6) of Title VI of the Federal Clean Water Act, that amounts in the Alaska Clean Water Fund be credited with interest earned. AS 46.03.032 (n) requires that a separate account must be provided in the Alaska Clean Water Fund for non-match State appropriations which do not receive credit for interest earned.

Section 25 of Chapter 95, SLA 1987 (CCS HB 75) (enclosed) appropriates \$13,074,400 to the Alaska Clean Water Fund, effective July 1, 1987, consisting of federal grant money and State match. Thus, all of this amount would go into the account that would receive interest.

MB/nem
Attachments

cc: Brian Andrews, Comptroller, Treasury Division

Attachment A

Funds and Accounts With Dedicated Earnings
Revised as of July 1, 1987

<u>Fund or Account</u>	<u>Statutory Citation</u>	<u>Agency Verifying Credit Calculation</u>	<u>Frequency of Verification</u>	<u>Agency Responsible for ARMS Entry</u>	<u>Frequency of Recalculation</u>
Alaska Clean Water Fund (exclusive of non-matching funds)(effective July 1, 1987)	AS 46.03.032	Administration (Finance)	Annually	Administration (Finance)	Annually
Fish and Game Fund	AS 16.05.116	Administration (Finance)	Annually	Administration (Finance)	Annually
Power Development Revolving Loan Fund	AS 44.23.600	Administration (Finance)	Annually	Administration (Finance)	Annually
Mental Health Trust Income Account	Ch. 132 SLA 1986 and AS 37.14.011(a)	Administration (Finance)	Annually	Administration (Finance)	Annually
Permanents Fund Dividend Trust Accounts	AS 43.23.105(e)	Revenue (Fiscal)	Quarterly	Administration (Finance)	Annually
Miscellaneous Trust Account (Department of Law)		Revenue (Fiscal)	Monthly	Administration (Finance)	Annually
Unlicensed Vessel Personnel Amenity		Administration (Retirement & Benefits)	Semi-annually	Administration (Finance)	Annually
Retirement Fund		Community & Regional Affairs	Quarterly	Administration (Finance)	Annually
Warner Trust Fund		Community & Regional Affairs	Quarterly	Administration (Finance)	Annually
Ryan Trust Fund		Community & Regional Affairs	Quarterly	Administration (Finance)	Annually
Bailiwick Energy Fund 1/	AS 44.25.036	Administration (Finance)	Annually	Administration (Finance)	Annually
Budget Reserve Fund 1/	AS 37.09.156(d)	Administration (Finance)	Annually	Administration (Finance)	Annually

1/ Income is only to be calculated (step 2.(c) of the agreement is to be omitted) unless the legislature appropriates the income to the fund, in which case it will be credited. An a result interest will be compounded annually at best.

Cross-Cutting Authorities

The Department of Environmental Conservation (DEC) and all recipients receiving financial assistance from the Alaska Clean Water Fund will comply with applicable Federal and Alaska State statutes, regulations and guidance. These laws and regulations include those that are applicable by their own language as well as those Federal "cross-cutting" authorities identified in EPA-published guidance documents for projects receiving assistance from funds directly made available from the EPA capitalization grants (See 40 C.F.R. §35.3145 and EPA Cross-Cutting Federal Authorities: A Handbook on the Application in the Clean Water and Drinking Water State Revolving Fund Programs, October 2003).

The current list of cross-cutting Federal authorities (with reference information) is published by the EPA Office of Groundwater and Drinking Water at <http://www.epa.gov/safewater/dwsrf/xcuts.html>.

In accordance with 18 AAC 76.040, the recipient is responsible for compliance with applicable environmental laws, regulations and executive orders. DEC acknowledges that it has an affirmative duty to confirm that assistance recipients are meeting their respective compliance obligations based on the Department's review of project records maintained by the assistance recipient as well as the Department's general oversight of each project.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Sarah Palin, Governor

P.O. BOX 110300
DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600

Division of Water
Anchorage
JUN 14 2007
RECEIVED

June 11, 2007

Re: Alaska Clean Water Fund Operating Agreement;
Attorney General Certification

TO WHOM IT MAY CONCERN:

I certify that the Operating Agreement for the Management of the Alaska Clean Water Fund between the State of Alaska Department of Environmental Conservation and the United States Environmental Protection Agency fully complies with all applicable state laws and regulations. Pursuant to AS 46.03.020, the Department of Environmental Conservation, as an instrumentality of the state, is authorized to enter into such agreements with the United States Environmental Protection Agency as part of its duties in administering the Alaska Clean Water Fund. This certification is based upon a review of the Operating Agreement as well as a review of the Alaska Clean Water Fund enabling legislation (AS 46.03.032), the relevant Department of Environmental Conservation regulations (18 AAC 76), the Alaska Constitution, and other applicable provisions of the Alaska Statutes.

Sincerely,


Talis J. Colberg
Attorney General